

CASE NO. 08cv 1589

ATTACHMENT NO. 6

EXHIBIT

TAB (DESCRIPTION)

1 THE CLERK: Jerome Hendricks.

2 THE COURT: Miss Placek, the Motion for New  
3 Trial which I have, I assume, is going to become  
4 the one that is a part of the Court file? It  
5 needs to be executed.

6 MS. PLACEK: Judge, I will most definitely  
7 execute it.

8 I apologize, Judge.

9 THE COURT: Are both sides ready for  
10 sentencing hearing?

11 MR. MURPHY: Yes, Judge, we are ready.

12 THE COURT: State, I will hear you.

13 MR. MURPHY: Well, Judge, there is a pre-  
14 sentence investigation report that was returned,  
15 and there's one error in that.

16 I would like to correct it, or at least  
17 clarify it.

18 On page 2 of the pre-sentence  
19 investigation under criminal history, it indicates  
20 that the defendant was convicted of aggravated  
21 criminal sexual assault, and sentenced to six  
22 years Illinois Department of Corrections.

23 But that does not include also, and is  
24 indicated on the State rap sheet, which is

1 attached to the pre-sentence investigation, the  
2 defendant was also convicted of the offense of  
3 kidnapping.

4 THE COURT: In the same case?

5 MR. MURPHY: Yes, Judge.

6 MS. PLACEK: This was part of that case, I  
7 believe, Judge. Is that correct?

8 A new case?

9 THE COURT: That is what I'm being told, it  
10 is part and parcel of the same case.

11 MR. MURPHY: That is my understanding, Judge  
12 of the State rap sheet.

13 It indicates it is all under the same  
14 case number, which is indicated on page 2 of the  
15 criminal history as well.

16 MS. PLACEK: So that will be the same victim.  
17 Is that correct?

18 Well thank you, Judge.

19 THE COURT: Later in the proceedings, if you  
20 wish, you can amend the pre-sentence report on its  
21 face to reflect that charge also.

22 Anything further?

23 MR. MURPHY: Yes, Judge.

24 I would mark as People's Exhibit No. 1 a

1 Certified copy of a birth certificate for the  
2 defendant, Jerome Hendricks, indicating a date of  
3 birth of April the 6th, 1961.

4 I ask leave to tender it.

5 MS. PLACEK: No objection, Judge.

6 THE COURT: Anything further?

7 MR. MURPHY: Yes, Judge.

8 I would ask the Court to take judicial  
9 notice of the proceedings that were had a trial,  
10 and also your findings with respect to this matter  
11 for purposes of the sentencing hearing.

12 THE COURT: Defense.

13 MS. PLACEK: I have no objection to that,  
14 either.

15 THE COURT: Anything further?

16 MR. MURPHY: Nothing further by way of  
17 evidence, Judge.

18 Judge, just for purposes of  
19 clarification, is the Court proceeding on the  
20 sentencing hearing separating it into two stages?

21 THE COURT: Well, eligibility. The State  
22 rests on phase 1?

23 MR. MURPHY: Yes, Judge.

24 THE COURT: Defense.

1 MS. PLACEK: Judge, with the stipulation, we  
2 would ask that the Court has taken into  
3 consideration the finding in this matter,  
4 therefore, Judge, we would also rest in this case  
5 as to eligibility.

6 THE COURT: Argument?

7 MR. MURPHY: Your Honor, at this state the  
8 Court is to determine the question of eligibility  
9 and eligibility is the guidance in the issue of  
10 eligibility that is under Chapter 38, Section 9-1  
11 and it is the State's Position in this particular  
12 care that the defendant is eligible for the death  
13 penalty, and the reason being, and it is  
14 specifically enunciated in the Statute, and I  
15 would like to go through the Statute and indicate  
16 what it says and how the defendant is eligible.

17 And, Judge, I am referring to Section  
18 9-1 and I will initially address sub-section B in  
19 the Statute.

20 In Section B one of the requirements is  
21 the defendant at the time of the commission of the  
22 offence has attained the age of 18 or more. What  
23 your Honor has before you is a certified copy of  
24 the defendant's birth certificate, showing that on

1 April the 6'th, 1961, he was born.

2 You also have evidence that was heard at  
3 trial, the defendant told Detective Michael Baker  
4 at the time of his arrest of his date of birth,  
5 and that corroborates the birth certificate.

6 Clearly, Judge, the evidence shows the  
7 defendant is 30 years of age at that time, and at  
8 the time of this offense was at the age of 18 or  
9 more.

10 The second requirement under  
11 Sub-Section B is the defendant be found guilty of  
12 the offense of first degree murder.

13 As the Court knows, the Court has  
14 already found the defendant guilty of first degree  
15 murder, having found the defendant guilty of  
16 Counts 1 and 2 and 3 in this charge.

17 Under Sub-Section B6 the Court must also  
18 find that the murdered individual in this case,  
19 Denise Johnson, was killed in the course of  
20 another felony, and with that section there are  
21 three requirements which must be satisfied.

22 Sub-Section A1 states that the murdered  
23 individual was actually killed by the defendant.  
24 The Court is well aware that all the evidence and

1 the Court findings were with respect to this  
2 issue, and indicate that the only conclusion that  
3 can be drawn is the defendant is the person who  
4 killed Denise Johnson.

5 Under Sub-Section B the Statute  
6 indicates that the defendant must be shown that  
7 the defendant acted with the intent to kill the  
8 murdered individual, or with the knowledge that  
9 his act created a strong probability of great  
10 bodily harm, in this case Denise Johnson.

11 Your Honor, in making a finding of  
12 guilty, found the defendant guilty of the offense  
13 of first degree murder based on the charge or  
14 based on the language of the intent to kill, and  
15 that is the language and the charge under Count 1  
16 which is used in Count 1 of the Indictment.

17 With respect to the other requirement,  
18 or the Court could also conclude that the  
19 defendant acted with knowledge that his actions  
20 created a strong probability of death or great  
21 bodily harm, and there has been a finding of  
22 guilty with respect to that, as to Count 2. And  
23 that language is contained within count 2.

24 So we have satisfied that requirement as

1 well.

2 And finally, with respect to this  
3 particular issue, Judge, the Court must find that  
4 the homicide was accompanied by another felony.  
5 That it was committed during the course of a  
6 felony.

7 There is specific felonies which are  
8 enunciated in the Statute: armed robbery,  
9 robbery, aggravated criminal sexual assault,  
10 aggravated kidnapping, forcible detention, arson,  
11 aggravated arson -- the list goes on and on.

12 In this particular case there was  
13 evidence that the defendant, during the commission  
14 of the murder, also committed the offense of  
15 aggravated criminal sexual assault --

16 MS. PLACEK: Objection.

17 Misstating a finding.

18 THE COURT: In what way does it misstate a  
19 finding?

20 MS. PLACEK: During the Court's finding, the  
21 Court stated that it couldn't be sure whether or  
22 not the killing in this matter took place as a  
23 direct result or during the course of the  
24 aggravated criminal sexual assault.

1                   The Court went on to say during this  
2 matter, Judge, and during this Court's finding,  
3 one of the reasons we asked for the order on the  
4 current transcript that in fact the Court could  
5 not tell, and thus dismissing the forcible  
6 aggravated criminal sexual assault, and finding  
7 rather, rendering judgments on the aggravated  
8 kidnapping and the aggravated criminal sexual  
9 assault based on age.

10                  THE COURT: That would be sufficient.  
11                  Aggravated criminal sexual assault based on any  
12 other ways in any aggravated criminal sexual  
13 assault.

14                  MR. PLACEK: I agree with the Court, Judge.  
15                  The point being, is that the language of  
16 the Statute and the language that the State was  
17 attempting to incorporate directly contradicts the  
18 Court in its finding in this matter.

19                  THE COURT: How does that directly  
20 contradict? I don't understand that, inasmuch as  
21 the Court found the defendant guilty of the  
22 offense of aggravated criminal sexual assault,  
23 does it make a difference how you committed that  
24 offense for the purposes of this sub-section?

1 MS. PLACEK: Most definitely, Judge.

2 I would call the Court's attention to  
3 certain cases.

4 First of all, People versus Morgan,  
5 cited at 1112 Illinois 2d, 111. It states in that  
6 particular case, and it specifically speaks of  
7 aggravating factors dealing as to the death  
8 penalty, Judge. It speaks that in fact in a  
9 finding in judgment dealing with those aggravating  
10 factors, they must be proven they were committed  
11 during the course of one of the crimes mentioned.

12 If it pleases the Court, during the  
13 Court's finding in the transcript both and when  
14 the Court was making its finding, Mr. Lufrano and  
15 myself, in our notes stated -- or excuse me --  
16 took down the Court saying that the Court could  
17 not be sure that this was this, that is, and I  
18 agree with the Court. The aggravated criminal  
19 sexual assault would possibly be enough to sustain  
20 if the Court then to go on to use the language, he  
21 couldn't be sure whether or not this killing took  
22 place during the course of or I believe, the other  
23 thing was an an afterthought; but, Judge, the  
24 Court clearly in the transcript spoke of a

1 separation of time.

2 We would bring also to the Court's  
3 attention People versus Taylor, 101 Illinois 2d  
4 508. People versus Walker, that speaks  
5 specifically again as to specificity needed. I  
6 believe that the amount was charged in that crime  
7 That one is cited at 19 Illinois 2d 501 and 2.  
8 People versus Brownwell, 79 Illinois 2d 508, and  
9 People versus Lee, a copy which was submitted to  
10 the Court during trial.

11 I believe --

12 THE COURT: Your objection is overruled at  
13 this point.

14 I will read the cases and we will see  
15 whether or not they comply.

16 You may proceed.

17 MR. MURPHY: Judge, as I was saying, the  
18 final requirement under sub-section B6 is that the  
19 victim was killed during the course of another  
20 felony.

21 Those felonies specifically delineated  
22 in the Statute. Two of those felonies which are  
23 delineated in the Statute, exist in this case.  
24 There's evidence to support those felonies, and

1 there's a finding of guilty on each of those  
2 felonies.

3 One felony being aggravated criminal  
4 sexual assault, and the Court made a finding of  
5 guilty on that count. And that is strictly based  
6 on the age of the victim and the age of the  
7 defendant.

8 There is also additional felony which  
9 can serve under a basis which is aggravated  
10 kidnapping. Your Honor found the defendant guilty  
11 of aggravated kidnapping. The defendant was found  
12 guilty of Counts 14, 15, 16, and 17. The  
13 evidence in this case supports that.

14 As I understand what the defendant is  
15 arguing to the Court with respect to this section  
16 is that somehow the evidence would support the  
17 defendant committing the offense of first degree  
18 murder is separate and apart from the evidence  
19 which supports his commission of the aggravated  
20 criminal sexual assault, and the aggravated  
21 kidnapping, to such an extent that they are so  
22 distance from one another that he is not a  
23 candidate for the death penalty.

24 Well, your Honor, there is absolutely no

1 evidence whatsoever in this case that supports  
2 that argument in this case.

3 The evidence that we do have in this  
4 case is that this was all part of at best -- this  
5 is all one part of one transaction or occurrence,  
6 and even in the argument he made, although they  
7 are citing a number of cases, there's no  
8 indication that those cases which are cited are  
9 similar to this case in any respect and how they  
10 apply.

11 So therefore, based on the fact the  
12 defendant was in fact of age, that the defendant  
13 was found guilty of the offense of first degree  
14 murder, that the defendant committed the offense  
15 of first degree murder when he committed the  
16 offense of aggravated criminal sexual assault.  
17 And when he committed the offense of aggravated  
18 kidnapping, we would ask you find the defendant  
19 eligible for a capital sentencing.

20 THE COURT: Defense.

21 MS. PLACEK: Your Honor, the particular issue  
22 the State brings up is the fact they asked for a  
23 stipulation dealing with the trial as a whole.

24 It was our contention, Judge, that by in

1 fact making that stipulation, which we have no  
2 problem doing, it includes the whole trial and the  
3 whole finder of facts' statement. Since this  
4 court was in fact the finder of fact, the Court  
5 allowed us to look into its mind because the Court  
6 made certain statements, and again those cases  
7 deal strictly with statutory aggravating factors,  
8 and again Morgan states that the aggravating  
9 factor has to be there beyond a reasonable doubt.

10 Judge, this Court expressed a doubt when  
11 the Court made its ruling. The court spoke very  
12 clearly that he could not tell whether or not the  
13 murder was during the course of the felony, he was  
14 not able to determine whether or not it might have  
15 been an afterthought, or in furtherance of.

16 Judge, the idea that eligibility is just  
17 some sort of mechanical thing, and that if charged  
18 the right things and convicted, has been rejected  
19 by the Court in these cases.

20 Our suggestion is quite frankly this:  
21 One, the Court base its ruling as to the  
22 aggravated criminal sexual assault on age. We  
23 would suggest that although we would agree on its  
24 face that it is included among the same, that it

1 bears mention of those cases rather than it  
2 setting out of statutory sections, we would take  
3 objection on that grounds.

4 In the alternative, Judge, we feel that  
5 a glimpse into this Court's mind during its ruling  
6 with the phrase: I cannot tell whether it was  
7 during the course or in furtherance of. It  
8 completely is left out of the Statute.

9 THE COURT: State?

10 MR. MURPHY: Judge, whether the defendant, if  
11 I understand the defendant's argument, whether the  
12 defendant, Jerome Hendricks, intended to kill  
13 Denise Johnson when he was committing the offense  
14 of aggravated criminal sexual assault on her, or  
15 when he was kidnapping her against her will, or  
16 whether he did it as an afterthought, is  
17 completely and totally irrelevant with respect to  
18 this section. \

19 It is absolutely outrageous that the  
20 defendant would contend he is not eligible for the  
21 death penalty because he decided to kill this girl  
22 moments after he just assaulted her and held her  
23 against her will.

24 That is outrageous, Judge. And if that

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1 is not what the language intended when they  
2 enacted the Statute, I would ask the Court  
3 disregard that argument and find the defendant  
4 eligible.

5 THE COURT: My position is -- and my  
6 understanding of the law is that the State has  
7 proven beyond a reasonable doubt the eligibility  
8 of the defendant for the imposition of capital  
9 punishment.

10 I must frankly confess to you however  
11 that before I rule in that way, that I will take a  
12 look at the authorities that Miss Placek has  
13 indicated to me.

14 My mind is not a computer and I don't  
15 hold cases in my head that I can regurgitate or  
16 call to the present consciousness at will.

17 I will take a look at them overnight.  
18 If they hold what I presently have a mind to think  
19 they hold, then my inclination would be to  
20 determine the defendant's eligibility beyond a  
21 reasonable doubt.

22 So I am going to continue this matter  
23 for further proceedings until tomorrow, and I will  
24 look at these authorities.

1 MS. PLACEK: Can you make that Thursday,  
2 Judge?

3 I do apologize to the Court.

4 THE COURT: How long is this hearing likely  
5 to go?

6 The reason I ask is because we could do  
7 it tomorrow and Thursday if necessary. But Friday  
8 is impossible because I won't be on the bench.

9 I would rather do it tomorrow and  
10 Thursday, and have it completed, even if I have to  
11 take it under advisement, than to have it hang  
12 over until some time next week or later, still  
13 taking evidence.

14 Do you have any idea how much court time  
15 you're going to take?

16 MR. MURPHY: I have no idea what the defense  
17 is doing; as to our portion of the remainder of the  
18 case, I would say 20 minutes to half an hour at  
19 the most.

20 THE COURT: Do you have any notion of how  
21 much court time?

22 MS. PLACEK: No longer than that, Judge.

23 And I have a doctor coming in on another  
24 case tomorrow.

1                   And I'm not trying to in any way  
2 discourage this Court or Mr. Hendricks saying one  
3 is more important than other.

4                   THE COURT: Order of Court, August 22nd.

5                   MS. PLACEK: Thank you, Judge.

6                   THE COURT: Can you be here at 10:00 a.m. on  
7 the 22nd?

8                   MS. PLACEK: Yes, your Honor.

9                   THE COURT: Mr. Murphy, may I address the  
10 Court before you adjourn this?

11                  THE COURT: Sure.

12                  MR. MURPHY: There's a possibility I may be  
13 involved in a jury trial nextdoor tomorrow or  
14 Thursday.

15                  Would the Court consider setting this  
16 matter at 9:30?

17                  MS. PLACEK: I can be here at 9:30, Judge,  
18 out of courtesy to Counsel. I can be here.

19                  THE COURT: 9:30 it is.

20                  (Whereupon, the above-entitled  
21 cause was continued to August 22, 1991)

22

23

24

1 STATE OF ILLINOIS )  
2 COUNTY OF COOK ) ss:  
3

4 IN THE CIRCUIT COURT OF COOK COUNTY  
5 COUNTY DEPARTMENT-CRIMINAL DIVISION  
6

7 THE PEOPLE OF THE )  
8 STATE OF ILLINOIS )  
9 -VS- ) Case No. 88 CR 12517  
10 JEROME HENDRICKS. ) Charge: Murder  
11

12 HEARING IN AGGRAVATION AND MITIGATION

13 BE IT REMEMBERED that the above-entitled  
14 cause came on for hearing before the Honorable LEO E.  
15 HOLT, Judge of said court, on the 22nd day of  
16 August, 1991.

17 PRESENT:

18 HON. JACK O'MALLEY,  
19 State's Attorney of Cook County, by:  
20 MR. JOHN MURPHY, and  
21 MR. SCOTT CASSIDY,  
22 Assistant State's Attorneys,  
23 on behalf of the People;

24 MS. RITA FRY,  
25 Acting Public Defender of Cook County, by:  
26 MR. VINCENT LUFRANO, and  
27 MS. MARIJANE PLACEK,  
28 Assistants Public Defender,  
29 on behalf of the Defendant.

30  
31 Nicola Peel Vogelgesang  
32 Official Court Reporter  
33 16501 S. Kedzie Parkway  
34 Markham, Illinois 60426

1 THE CLERK: Sheet nine, line one, Jerome Hendricks  
2 in custody.

3 (Case passed.)

4 THE CLERK: Sheet nine, line one, Jerome Hendricks.

5 MR. LUFRANO: May I approach the bench?

6 THE COURT: You may.

7 MS. PLACEK: We had passed the matter. I was in  
8 contact with the defendant's family two nights ago. I  
9 think they're going to be here. I'm not sure where they  
10 are.

11 THE COURT: The matter was set for 9:30, Mr.  
12 Lufrano. And while I'd like to accommodate them, we're  
13 going to proceed. The matter was here on Tuesday. I  
14 heard arguments as to whether or not the defendant was  
15 eligible pursuant to the statute for imposition --  
16 Madame, whoever that is with the child, you have a right  
17 to be in court. This is a public court room, and you  
18 have an absolute right to be here. And I'm fully aware  
19 of the fact that you cannot control the child. But one  
20 of the other -- thank you.

21 At that time, that is on Tuesday, the  
22 defendant cited certain authorities to the Court for the  
23 Court's consideration. And I have read those  
24 authorities. If either side desires to make any further

1 argument, although it has been argued to me, I will  
2 allow you now an opportunity to address more fully your  
3 positions, particularly in relationship to the  
4 authorities that were cited to me, since I now have read  
5 them and understand what they hold.

6 State, do you have anything additionally that  
7 you would like to say to the Court in that regard?

8 MR. MURPHY: No, Judge.

9 THE COURT: Ms. Placek?

10 MS. PLACEK: ~~No~~, Your Honor. No.

11 THE COURT: May I see the defendant's file?

12 This defendant was found guilty of the offenses  
13 of first degree murder as charged in counts one, two,  
14 and three of this Indictment. Count one of the  
15 Indictment charging first degree murder in that the  
16 defendant without lawful justification intentionally and  
17 knowingly strangled and killed Denise Johnson.

18 Count two charges that the defendant committed  
19 the offense of first degree murder in that without  
20 lawful justification, he strangled and killed Denise  
21 Johnson, knowing that such strangling created a strong  
22 probability of death or great bodily harm to Denise  
23 Johnson.

24 Count three of the indictment charges first

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1 degree murder in that without lawful justification,  
2 while committing the forcible felony of kidnapping,  
3 defendant strangled and killed Denise Johnson.

4                   The defendant was also found guilty of  
5 aggravated criminal sexual assault as charged in count  
6 ten of the Indictment in that he, being 17 years of age  
7 or over, committed an act of sexual penetration upon  
8 Denise Johnson, and Denise Johnson was under the age of  
9 13 when the act of sexual penetration was committed.

10                  He was found guilty of the offense of  
11 concealing of a homicidal death, charged in count 12 of  
12 the Indictment in that he concealed the death of Denise  
13 Johnson by hiding her body in an enclosed garage.

14                  He was found guilty of kidnapping as charged  
15 in count three -- count 13 of the Indictment. Was found  
16 guilty of the offense of aggravated kidnapping as  
17 charged in count 14, 15, 16, and 17 of the indictment.  
18 And he was found guilty of the offense of unlawful  
19 restraint as charged in count 18 of the indictment.

20                  The question then arises as to whether or not  
21 the defendant, pursuant to the provisions of the  
22 statute, is eligible for imposition of the death penalty  
23 based upon the criteria set forth in the statute.

24                  In order to find the defendant eligible for

1 imposition of the death penalty, the State must prove  
2 beyond a reasonable doubt the aggravating factors which  
3 would give rise to that eligibility. One of the factors  
4 that the State must prove beyond a reasonable doubt,  
5 that the defendant had attained the age of 18 years or  
6 more, and that he had been found guilty of the offense  
7 of first degree murder.

8           In this case, the basis for the eligibility of  
9 the defendant is that the defendant was found guilty of  
10 the offense of felony murder. And in that regard, the  
11 State must not only prove beyond a reasonable doubt that  
12 the defendant committed the offense of murder, but must  
13 prove several other factors enumerated in the statute.  
14 To wit, that the deceased was killed in the course of  
15 another felony. And that is the issue that is contested  
16 here, as I understand it, most vociferously by the  
17 defendant. Whether or not the defendant killed the  
18 deceased during the course of another felony.

19           And it is contended, as I understand the  
20 argument of the defendant, that because the defendant  
21 was not found guilty of the aggravated criminal sexual  
22 assault offense predicated upon force, because the Court  
23 determined that it could not determine from the evidence  
24 in this case whether the sexual contact had with the

1 victim was a direct result of force or not, therefore,  
2 the defendant cannot be found guilty or found eligible  
3 for imposition of the death penalty.

4                   And in that regard, the defense tendered to  
5 the Court a number of authorities. Taking those  
6 authorities in the chronological order in which they  
7 were decided by the Supreme Court, those cases are  
8 People versus Brownell, B-r-o-w-n-e-l-l, which appears  
9 at 79 Illinois Second 508. People versus Walker, which  
10 appears at 91 Illinois Second 502. People versus  
11 Taylor, which appears at 101 Illinois Second 508. And  
12 People versus Morgan, which appears at 112 Illinois  
13 Second 111. I have read each of those cases and find  
14 them to be not applicable to the issue presently before  
15 the Court.

16                   The defendant was found guilty, as I  
17 indicated, of the offense of felony murder as charged in  
18 count three. He was also found guilty of the predicate  
19 offense of kidnapping as charged in count 13, and the  
20 aggravated kidnapping offenses as charged in count 14,  
21 15, 16, and 17 of the indictment.

22                   Because those offenses, that is the aggravated  
23 -- the kidnapping and the aggravated kidnapping offenses  
24 of which the defendant was found guilty are predicate

1 offenses to the felony murder, they merge into the  
2 finding of guilty of murder. Therefore, the Court did  
3 not enter judgment on them. But they stand as the basis  
4 for finding that the defendant committed the offense of  
5 murder during the course of a forcible felony, which is  
6 enumerated in the statute as an aggravating factor,  
7 giving rise to eligibility for the death penalty.

8                   And in section 9 dash 1B, subsection C, the  
9 felonies which give rise to the eligibility for  
10 imposition of the death penalty are enumerated; and they  
11 are armed robbery, robbery, aggravated criminal sexual  
12 assault, aggravated kidnapping, and some others which  
13 are not relevant to our conclusion.

14                   It is the Court's determination, based upon  
15 the evidence, that the defendant is eligible for  
16 imposition of the death penalty, the Court -- the State  
17 having established beyond a reasonable doubt the  
18 requisite elements enumerated in the statute that make  
19 the defendant eligible for such sentencing.

20                   If both sides are ready, we can then proceed  
21 to a hearing in aggravation and mitigation as to whether  
22 or not the death penalty should be imposed on this  
23 defendant.

24                   MR. LUFRANO: Your Honor, we would request again a

1 continuance or at least hold the case till later. We're  
2 awaiting the family of the defendant.

3 THE COURT: Mr. Lufrano, I'm going to grant that  
4 request for a very short period of time. And I  
5 understand the reason for the request. And I'm going to  
6 try my very best to accommodate it. But this case was  
7 set for 9:30. I'm certain that that information was or  
8 should have been, at least, conveyed to the defendant's  
9 family. And they should be here.

10 In any event I'm going to continue this case  
11 while I complete the balance of my call, so much of it  
12 as I can complete, and then we're going to return to  
13 this case.

14 MR. MURPHY: Before you adjourn the case, may I  
15 have a moment to speak to Counsel?

16 THE COURT: Sure.

17 ( Pause.)

18 MS. PLACEK: Judge, we have no objection to the  
19 State, I understand has scheduling problems with one of  
20 their witnesses. Previously told the State we would  
21 stipulate to the testimony. Or in the alternative, if  
22 it causes any kind of problem to have the gentleman  
23 wait, because the Court was gracious enough to allow us  
24 to pass for a short time. I have no objection to it

1 being taken now.

2 MR. MURPHY: We have one witness, Judge, we intend  
3 on calling. Proceed on that one witness, and then  
4 adjourn.

5 MS. PLACEK: Judge, I understand the nature of the  
6 testimony. Like I told Counsel, we'd either stip; or if  
7 he wishes to call live testimony, that's fine. We can  
8 put him on now.

9 THE COURT: The question is whether or not you want  
10 the defendant's family here. I'll hear the testimony by  
11 way of stipulation or otherwise. But I thought the  
12 defense request was that the defendant's family wanted  
13 to be present.

14 MS. PLACEK: That's correct, Judge. As the Court  
15 said, I understand that this matter was to be set at  
16 9:30. I was here at 9:30, Your Honor. You want to  
17 stip?

18 (Discussion held off record.)

19 MS. PLACEK: Judge, I think we'd like to wait for a  
20 bit, thank you.

21 THE COURT: Pass.

22 (Case passed.)

23 THE CLERK: Sheet nine, line one, Jerome Hendricks,  
24 in custody.

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1 THE COURT: Mr. Cassidy, are you ready to proceed?

2 MR. CASSIDY: Our assistant is coming down now,  
3 Judge, from upstairs.

4 THE COURT: Are you ready to proceed, Mr. Murphy?

5 MR. MURPHY: Judge, we have one witness, who is on  
6 his way down right now from the State's Attorney's  
7 office.

8 ( Pause.)

9 MR. CASSIDY: May I apprise the Court while we're  
10 waiting? The impact statement submitted by our office,  
11 Miss Estelle Fields, one of the Assistant State's  
12 Attorneys, an assistant from our office, submitted, we  
13 would ask you to consider what is contained only within  
14 the purview of the recent Supreme Court case, decided  
15 June 27, 1991. And Payne versus Tennessee.

16 THE COURT: Do you know, Mr. Cassidy, what  
17 provision of the code is applicable to victim impact  
18 statements under Illinois law?

19 MR. CASSIDY: No, Judge. I haven't looked at it.

20 THE COURT: I found it. It's chapter 38 section  
21 1406.

22 (Pause.)

23 THE COURT: Mr. Cassidy, are you going to call the  
24 author of that report? Or the witness?

1 MR. CASSIDY: No, Judge.

2 THE COURT: Can the Court consider it without your  
3 calling the witness? Pursuant to 1406, in your  
4 judgment?

5 MR. CASSIDY: Could I have just one moment, please,  
6 Judge?

7 (Pause.)

8 MR. CASSIDY: Judge, I don't see reading  
9 requirement that we have to call the victim to testify  
10 or the witness to testify.

11 THE COURT: About half way through the paragraph,  
12 the sentence which begins, quote, if the victim chooses  
13 to exercise this right, the impact statement must have  
14 been prepared in writing in conjunction with the Office  
15 of the State's Attorney prior to the initial hearing or  
16 sentencing before it can be presented orally at the  
17 sentencing hearing. What does that mean in your  
18 judgment?

19 MR. CASSIDY: I believe it's saying that the  
20 statement can be read into the record by either -- by  
21 anyone.

22 THE COURT: The rules of evidence are not strictly  
23 enforced at this point in the proceedings, as we all  
24 know. The law, as I understand it, in this hearing

1 certainly is, if a jury were hearing this case, the  
2 defendant would not be afforded a right of elocution.  
3 He would, however, be permitted to take the stand and  
4 testify to anything that he chose to, consistent with  
5 the nature of the proceedings, and be subject to cross  
6 examination.

7 Why should not any other witness, including  
8 the victim impact witness, be subjected to cross  
9 examination as would be the defendant?

10 MR. CASSIDY: Well, Judge, if defense wishes, then  
11 we will, based upon your question, Judge, we don't have  
12 an answer to it. So if the defense wishes, we will call  
13 the author of the report. Otherwise, I was going to  
14 read portions of it.

15 THE COURT: Ms. Placek or Mr. Lufrano?

16 MR. LUFRANO: Your Honor, we have an objection to  
17 the statement being considered at all.

18 THE COURT: Well, you're aware of the case that Mr.  
19 Cassidy just cited to me, are you?

20 MR. LUFRANO: Yes, Your Honor, there they're  
21 talking about victim impact statements, with some  
22 limitation, this goes beyond. And it goes beyond it,  
23 because here there's simply emotion. There isn't any  
24 impact in this that wouldn't occur as a result of

1 natural causes or that would make the death in this case  
2 any different than the death in any other case.

3                 Some of them, in addition, that this is simply  
4 as it stands, is written, is unfounded hearsay under  
5 oath. It is not subject to cross examination with any  
6 significance, because in the cross examination process,  
7 what Defense Counsel does is to exaggerate the  
8 aggravation.

9                 In addition, Your Honor, I don't believe that  
10 the State has a right to draft a law which grants State  
11 rights which contravene the Constitutional rights of the  
12 defendant. And as such, this injects emotion. And I'm  
13 talking about this document itself, not the victim  
14 impact statement per se. There may be some victim  
15 impact statements which do not do that.

16                 But this one specifically interjects emotion.  
17 And in a case which in and of itself, because of the  
18 kind of case, already has enormous emotive value to it.  
19 If the Court has to actively address and overcome,  
20 because punishment is to be based on reason. There  
21 isn't a single paragraph that isn't simply emotive in  
22 nature. Some of the losses, the financial losses  
23 addressed, are almost trivial and are the kind that  
24 would not be cognizant at law in any event, in any case

1 whatsoever. For example, transportation costs, thrown  
2 in as an added thought here.

3 The impact as described here, none of it is a  
4 direct result of the felonious act. They are all, each  
5 and every one of them, very remote, almost totally  
6 unperceivable by the perpetrator, and simply added to  
7 get the Court's attention after it has once overcome the  
8 emotional impact of the case itself, and pushed the  
9 Court backwards towards an emotive setting instead of a  
10 basis of reason. And that's its only purpose. That  
11 addresses absolutely not a single other purpose. There  
12 is not a single statement in this document that is a  
13 direct result of felonious injury.

14 MS. PLACEK: Judge, please the Court, also, in  
15 answer to the Court's question, I'm familiar with the  
16 case recently Supreme Court case with which the Court  
17 speaks of. Particular problem I'm having, and I believe  
18 that the first issue that the State has to overcome, in  
19 review of the file in this matter, I believe that my  
20 predecessors, Mr. Gant and Mr. Lemons, filed certain  
21 pretrial motions dealing with Constitutionality and  
22 discovery dealing with the death penalty.

23 In this particular matter, Judge, I believe  
24 that one of the motions filed, at least pursuant to my

1 file, was, so to speak, a discovery motion dealing with  
2 the fact that we asked for notice for all those people  
3 that the State intended to call as part of the death  
4 hearing, as part of what we felt was our requirement.

5           In this particular matter, Judge, number one, we  
6 feel that the "oral" in the statute as stated and read  
7 by the Court, the Assistant State's Attorneys, deal not  
8 with the State's Attorney or anyone orally reading a  
9 victim impact statement to a Court, but rather, Judge,  
10 the victim impact statement is to be used more or less  
11 as a tool of discovery to note what could or would be  
12 said.

13           Therefore, Judge, I understand the Court's  
14 concern and do agree with the Court's concern dealing  
15 with the issue of hearsay. As to the calling of the  
16 witness, the particular problem I would have and the  
17 first objection dealing with that deals specifically,  
18 Judge, with my predecessors' motions as to knowledge or  
19 a response to anyone who the State was willing to call  
20 as part of the death penalty hearing, which I don't  
21 believe has been complied with.

22           THE COURT: State, do you care to respond?

23           MR. CASSIDY: Judge, just briefly, Your Honor, at  
24 the time, Your Honor, that motion -- when the motions

1 were filed, Supreme Court case wasn't even decided at  
2 that time. At that time, we had no intention of using  
3 the victim impact statement. So we couldn't have  
4 complied, if that is a discovery violation. I think  
5 that's what the defense argument is. That's all I have,  
6 Judge.

7 THE COURT: All right. On two grounds, the  
8 discovery violation argument is not persuasive. One,  
9 because of what Mr. Cassidy has just indicated. Booth  
10 versus Maryland, which was to be sure, very short lived.  
11 The Supreme Court held that victim impact statements on  
12 a death hearing were not to be allowed. Mr. Lufrano,  
13 my understanding of Booth is that the Supreme Court  
14 disallowed victim impact in a death sentencing hearing  
15 for precisely the reasons that you suggest, that they  
16 tended to reach to the emotional aspects of the case and  
17 not to reason. That may not have been entirely the  
18 reasoning of the Supreme Court, but one cannot, it seems  
19 to me, reading Booth, without coming to the conclusion  
20 that that was of major concern to the Supreme Court.

21 As I say, Booth was probably one of the  
22 shortest lived cases that the United States Supreme  
23 Court has ever decided. Then, within perhaps less than  
24 five years, United States Supreme Court reversed Booth.

1 And so the argument that an impact statement is more  
2 emotional than factual doesn't seem to have much weight.  
3 The fact of the matter is that victim impact statements  
4 are permissible in jurisdictions that permit them,  
5 without contravening the 8th and 14th Amendments of the  
6 United States Constitution.

7 I haven't, I haven't read the latest Supreme  
8 Court case. I'm aware of a holding. And I'm not  
9 certain, and it could not be argued, it seems to me,  
10 that the Supreme Court was unaware of what it was  
11 permitting by, again, sanctioning victim impact  
12 statements when in Booth they specifically addressed the  
13 concerns that you have. So they must have been aware  
14 that that was going to be the end result of overruling  
15 Booth.

16 And Illinois is a jurisdiction that permits  
17 victim impact statements in a death sentencing hearing.

18 MR. LUFRANO: I think Your Honor had misconstrued  
19 what I was saying.

20 THE COURT: No. I have not misconstrued it. We  
21 were talking about the specifics of the particular death  
22 impact statement in this case.

23 MR. LUFRANO: Yes, where there is nothing but  
24 emotion.

1       THE COURT: I'm not certain that that has anything  
2 to do with its admissibility. It may very well mean  
3 that little or no weight should be given to it. But  
4 that's different from whether or not it is admissible.

5       MR. LUFRANO: What I'm suggesting is that the  
6 weight that this type of statement ought have is so low  
7 that it ought be considered for naught.

8       THE COURT: The discovery violation, obviously, is  
9 of no serious import to the Court, because at the time  
10 that this case commenced and during all stages of the  
11 pretrial matters, Booth was in effect. And thus the  
12 State could not have intended to offer a victim impact  
13 statement and thus had no reason to notify the defense  
14 that it intended so to do.

15       Secondly, while I'm aware of Taylor versus  
16 Illinois, and I'm aware of that Taylor versus Illinois  
17 applies with equal force to sanctions which could be  
18 imposed upon the State as well as sanctions which can be  
19 imposed on the defense for discovery violations, thus  
20 far, and I think I'm accurate on this, I have not denied  
21 either party an opportunity to call witnesses in support  
22 of their case, because the discovery violation, within  
23 the Court's judgment, was inadvertent.

24       I read Taylor to be a sanction which in my

1 judgment was inappropriately applied to the defendant.  
 2 But what was going on in Taylor, as I understand Taylor,  
 3 who was a lawyer was engaged in unprofessional conduct;  
 4 and instead of sanctioning the lawyer, the Court  
 5 sanctioned the defendant by failing to allow, by  
 6 refusing to allow the defendant to call witness in his  
 7 defense.

8                   The Supreme Court of the United States found  
 9 under the circumstances of Taylor, and I think you have  
 10 to read the factual background of the case in order to  
 11 understand Taylor, that there was no violation, that  
 12 there was no violation of that defendant's rights. But  
 13 I don't read Taylor so broadly as to mean that any time  
 14 a discovery violation occurs that either side to a case  
 15 should be barred from calling witnesses. That, in my  
 16 opinion, is perhaps the most draconian sanction that one  
 17 can impose in a criminal case. It permits, perhaps, the  
 18 conviction of an innocent defendant, or permits the  
 19 acquittal of a guilty defendant, simply because a lawyer  
 20 made an inadvertent mistake.

21                   Now, this victim impact statement has been in  
 22 your hands, I presume, for several days. Not had an  
 23 opportunity to investigate it and avail yourself of the  
 24 opportunity to read it, that's one thing. But simply

1 because it was not listed in a document called Answer to  
2 Discovery is insufficient for me to bar the State from  
3 using it.

4 I'm not certain, Mr. Cassidy, what the  
5 language in 1406 means in so far as it relates to being  
6 presented orally. I am, however, extremely concerned  
7 with the holding hearsay statement without any  
8 opportunity to confront at all.

9 MR. CASSIDY: We understand that, Your Honor. And  
10 if I may, Judge, just spoken with Miss Field, the author  
11 of the report, and we will call her as a witness. And  
12 she'll read just a short -- not the whole thing, just a  
13 short part of it.

14 MS. PLACEK: If it pleases the Court, Judge, in  
15 case Mrs. Fields is going to testify, we, of course,  
16 would have an objection to reading.

17 THE COURT: The victim impact statement, unless you  
18 can find something in 1406 that would tend to suggest  
19 that the impact statement can't be presented in that  
20 fashion --

21 MS. PLACEK: The problem I have, Judge, is that in  
22 the State's Attorneys initial statement, I believe --  
23 and perhaps I'm incorrect, he stated today that the  
24 victim impact statement was prepared with help of their

1 office, and I believe a specific party was mentioned.  
2 If this is incorrect, and I'd ask to be corrected now.

3 THE COURT: Well, the statutes, Ms. Placek, seems  
4 to contemplates that the victim impact statement must be  
5 prepared in conjunction, as the language says.  
6 specifically, must have been prepared in writing in  
7 conjunction with the Office of the State's Attorney.

8 MS. PLACEK: I have no objection to the statute,  
9 Judge. What I'm suggesting to the Court, quite frankly,  
10 is this. If that we're having a live witness present  
11 it, and the State intends to only have something read, I  
12 would like an assurance from the State that the person  
13 reading it rather than, shall we say, being given the  
14 means and method to do independent authorship of the  
15 statement, was not in fact assisted to the point of  
16 having, shall we say, words put in their mouth under the  
17 excuse of these are better court words.

18 THE COURT: That's what you're going to have an  
19 opportunity to determine through your right of cross  
20 examining the witness.

21 State, call your first witness.

22 MR. MURPHY: Assistant State's Attorney Patrick  
23 Finley.

24 (Witness sworn.)

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1       THE COURT: Good morning. It is afternoon. That  
2 microphone is on. If you'll speak directly into it,  
3 keep your voice up, we'll all hear you.

4       THE WITNESS: Fine, Judge.

5                   PATRICK FINLEY,

6 called as a witness herein on behalf of the People of  
7 the State of Illinois, having been first duly sworn, was  
8 examined and testified as follows:

9                   DIRECT EXAMINATION

10                  BY MR. MURPHY:

11       Q        Would you state your name, spell your last  
12 name for the Court Reporter?

13       A        Patrick Finley. F-as-in-Frank-i-n-l-e-y.

14       Q        By whom are you employed?

15       A        Cook County State's Attorney Office.

16       Q        And what is your position with the Cook  
17 County State's Attorneys?

18       A        Currently assigned to felony review.

19       Q        Now, how long have you been with the Cook  
20 County State's Attorneys Office?

21       A        Over two years.

22       Q        Now, are you licensed to practice law in the  
23 State of Illinois?

24       A        Yes.

1 Q How long have you been licensed for?

2 A May of 1985.

3 Q Now, Assistant State's Attorney Finley, I'd  
4 like you to look at this individual seated right here  
5 with the light color jacket. You recognize that  
6 individual?

7 A Yes, I do.

8 MR. MURPHY: And for the record, Judge, I pointed  
9 to the defendant, Jerome Hendricks.

10 THE COURT: May so reflect.

11 MR. MURPHY: Q And how do you recognize the  
12 defendant, Jerome Hendricks?

13 A I met Mr. Hendricks March of this year at  
14 26th and California.

15 Q And where was that at 26th and California?

16 A In Judge Fitzgerald's courtroom.

17 Q And could you describe the circumstances  
18 under which you met him at that time?

19 A That was a Prisoner Review Board hearing  
20 regarding an allegation of violations made by Mr.  
21 Hendricks.

22 Q Now, that was a parole hearing?

23 A Correct.

24 Q And could you tell Judge Holt what occurred

1 during the course of that parole hearing?

2 A Yes. That courtroom that day were a number  
3 of hearings going on with one particular Hearing  
4 Officer. I don't recall his name. I believe he was an  
5 Hispanic gentleman. Mr. Hendricks' case was called.  
6 When the Hearing Officer informed Mr. Hendricks of the  
7 allegations against him, Mr. Hendricks told the Hearing  
8 Officer before myself that he wished to be violated,  
9 which I understood to mean his mandatory supervised  
10 release or what we speak of as parole.

11 Q Now, did you become familiar with the  
12 defendant Jerome Hendricks' parole record, mandatory  
13 supervised release record?

14 A I knew he was on parole since about April of  
15 1988.

16 Q And was he on parole up to and including the  
17 time that you came in contact with him in March of 1990?

18 A Yes, he was.

19 MR. MURPHY: I have no further questions, Judge.

20 THE COURT: Cross.

21 MR. LUFRANO: No questions, Judge.

22 THE COURT: Thank you, Mr. Finley, you may step  
23 down.

24 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)

2 THE COURT: Call your next witness.

3 MR. CASSIDY: Thank you, Your Honor. Please the  
4 Court, Your Honor, State would call Mrs. Estelle Fields.

5 MR. LUFRANO: We would object. She is not a family  
6 member within the designation under the statute:  
7 spouse, parent, or sibling.

8 THE COURT: What section? Swear her in.

9 (Witness sworn.)

10 MR. LUFRANO: I think it's in 1406, Judge. I might  
11 be wrong. I'm taking the language by the State. I  
12 think it's in the Statute.

13 THE COURT: There's nothing in the -- in the  
14 statute, at least section 1406, that defines who is a  
15 victim in this type of proceeding. By definition, it  
16 could not be the actual decedent, obviously. So we  
17 necessarily are talking about someone who has a  
18 relationship to the decedent in such a way as to make  
19 him or her a victim within the meaning of this language.  
20 And I can't determine that without hearing the nature of  
21 the relationship here, to determine whether or not,  
22 given the lack of specificity in the statute in terms of  
23 the defining who is a victim in case of a death penalty  
24 hearing. I would hear the relationship and determine

1 for myself whether or not this person is a proper person  
2 to testify. You may proceed.

3 MR. MURPHY: If I may address the Court on one  
4 other matter. If the record is not clear, the victim  
5 impact statement was tendered to the defense on August  
6 19th. So if that this becomes an issue in this case.  
7 And as I understand it, the defendant is not requesting  
8 a continuance for the purpose of reviewing this victim  
9 impact statement any further, since they are not  
10 objecting on that basis to this witness testifying.

11 THE COURT: You may proceed, Mr. Cassidy.

12 ESTELLE FIELDS,

13 called as a witness herein on behalf of the People of  
14 the State of Illinois, having been first duly sworn, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CASSIDY:

18 Q Can you state your name and spell your last  
19 name?

20 A Estelle Fields. F-i-e-l-d-s.

21 Q And, Miss Fields, what relationship did you  
22 have with Denise Johnson?

23 A I was her aunt.

24 Q And did Denise Johnson ever live with you,

1 Miss Fields?

2 A Yes, she did.

3 Q Can you please tell His Honor, Judge Holt,  
4 how long approximately did Denise Johnson live with you  
5 prior to her dying?

6 MR. LUFRANO: At this time, we object. This is all  
7 cumulative. Miss Fields testified in the case in chief  
8 all the questions now asked.

9 THE COURT: Overruled.

10 MR. CAASSIDY: Q You understand the question? You  
11 want me to restate it?

12 A She lived with me and in my home two years  
13 before she, before she was killed. But before that, we  
14 lived together in my father's house when she was born.  
15 My sister and her husband, Mr. Johnson, and Denise, my  
16 children, we all lived in the same house.

17 Q Do you know Denise Johnson's mother?

18 A Yes, I do.

19 Q And what is her name?

20 A Denise Johnson.

21 Q And can you please describe for His Honor her  
22 physical condition?

23 A She is deaf.

24 Q Did you become somewhat of a mother figure or

1 in fact were you her legal guardian of Denise Johnson?

2 A Yes, I was.

3 Q Did you, Estelle, did you prepare an impact  
4 statement in this case?

5 A Yes, I did.

6 Q And did you prepare that with the help of Mr.  
7 Murphy and myself?

8 A No. No. No.

9 Q Following that, did you give it to Mr. Murphy  
10 after you prepared it, and myself?

11 A Yes.

12 Q You have that victim impact statement with  
13 you?

14 A Yes, I do.

15 Q Are you prepared to read portions of that to  
16 His Honor?

17 A Yes.

18 MR. CASSIDY: Your Honor, at this time I would  
19 request the witness be allowed to read portions of it.

20 THE COURT: Mark it as an exhibit.

21 MR. CASSIDY: I'm sorry. Mark it as State's  
22 Exhibit Number One for this hearing.

23 MR. MURPHY: Already marked the birth certificate  
24 as number one, unless you consider this a --

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1 THE COURT: No. Mark this as number two.

2 MR. CASSIDY: Two, Judge?

3 THE WITNESS: You want me to read it now?

4 THE COURT: Yes, you may.

5 MR. CASSIDY: Thank you, Your Honor.

6 THE WITNESS: It seems that this tragedy is  
7 something that will always haunt me. My daily routine  
8 changed a lot after Denise was killed. I used to get up  
9 in the morning, get a cup of coffee, get dressed, and go  
10 to work. I started waking up at night. In the morning,  
11 I wanted to stay in bed, not wanting to see or talk to  
12 anyone. The days I was able to pull myself out of bed,  
13 I found myself cleaning the house every minute of the  
14 day. Tried to keep busy so I could try not to think  
15 about what happened to Denise.

16 As time went by, I was a victim in my own  
17 home. Every time I walked past her room, it became more  
18 unbearable. I could see her clothes and smell her  
19 scent. My daughter shared a room with Denise. She  
20 thought at one time that she saw Denise in the room. I  
21 believe I had felt her presence. I started sleeping in  
22 her bed to feel close to her. It got so bad, my  
23 daughter had to leave. And so did I. We had to move to  
24 try to let go and realize she was dead.

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1           Even after moving, the sadness, anger, and  
2 guilt all came back. I need to be free. How? I  
3 stopped dating. I went in a shell trying only with one  
4 concern, to protect the rest of my family. More so the  
5 girls, my daughters, and my granddaughters. I don't  
6 have a normal life. I am still upset because I know  
7 that other family members and her friends did not get a  
8 chance to see her for the last time to say goodbye. We  
9 wanted to touch her, to look at her; but because her  
10 body was so bad, we had to have a closed casket at her  
11 funeral. She wanted to be able to see her -- She won't  
12 be able to see her family any more. Nor will we be able  
13 to see her. She won't be able to wake up in the  
14 morning. She will never go on a family picnic.

15           MR. LUFRANO: Objection, Your Honor. This entire  
16 colloquy that's continuing --

17           THE COURT: Overruled.

18           MR. LUFRANO: -- is a result of any other incident.

19           THE COURT: Overruled.

20           THE WITNESS: She will never go to high school.  
21 She will never go on a prom. She'll never know what  
22 it's like, what it is like to fall in love. She'll  
23 never experience motherhood and the love of a child.  
24 She'll never be able to make this world a better world,

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1 which is what she wanted to do. She was ours, and now  
2 she is gone. She was true innocence. And now it is  
3 lost.

4 MR. CASSIDY: No further questions.

5 THE COURT: Cross.

6 MR. LUFRANO: Nothing on cross. Emotional value  
7 being all --

8 MR. CASSIDY: Objection, Judge.

9 THE COURT: Do you have any cross examination you  
10 want to ask of this witness?

11 MR. LUFRANO: No, Your Honor.

12 THE COURT: Thank you, Miss Field. You may step  
13 down.

14 (Witness excused).

15 THE COURT: Call your next witness.

16 MR. CASSIDY: Judge, we have no further witnesses.

17 THE COURT: State rest in aggravation. Defense?

18 MR. CASSIDY: Judge, we ask that you only consider  
19 that portion of the victim impact statement which was  
20 recited into the record.

21 THE COURT: Defense?

22 MR. LUFRANO: Your Honor, it's hard to do since  
23 they tendered the entire thing. We objected to it.

24 Unless the Court wishes to ignore the entire statement.

1 THE COURT: Defense?

2 MR. LUFRANO: We renew the objection.

3 THE COURT: Objection is overruled.

4 MR. LUFRANO: Your Honor, we would ask for a date.

5 The family was contacted. There was testimony -- we had  
6 anticipated -- why they're not here, we have no specific  
7 knowledge as to why they're not here. There were  
8 problems in the past with threats and certain other  
9 instances which were earlier brought to the Court's  
10 attention. I don't know if that's what prevented them  
11 from being here or not. I did in fact talk with David  
12 Hendricks two nights ago and left with the impression  
13 that the family would be here this morning at 9:30.

14 THE COURT: You have witnesses under subpoena, Mr.  
15 Lufrano?

16 MR. LUFRANO: No, Your Honor. They were family.  
17 We didn't anticipate a subpoena would be necessary.

18 THE COURT: Motion for continuance is denied.

19 MR. LUFRANO: In that case, we rest, Your Honor.

20 MR. MURPHY: Judge, if I may just respond to one  
21 thing Counsel stated for the record. I have no  
22 knowledge. We have no knowledge whatsoever of any  
23 threats. First time I ever heard that come up at any  
24 time is as Counsel said it just now for the record.

1 MS. PLACEK: To refresh both this Court and the  
2 State's --

3 THE COURT: If the record contains any indication  
4 that the defendant or any member of his family was  
5 threatened, it contains it. If it doesn't, it doesn't.

6 Mr. Hendricks, you have a right to testify in  
7 this case in your own behalf. You also have a right to  
8 call witnesses in your own behalf. In making the  
9 decision as to whether or not you choose to testify in  
10 this case, because you also have a right not to testify,  
11 you of course should be guided by, to some extent at  
12 least, or if not guided by, you certainly have a right  
13 to confer with your lawyer and receive the advice of  
14 your lawyers and to receive the reasons pro or con why  
15 you should or should not testify in these proceedings.

16 If you have not had a sufficient opportunity  
17 to discuss the matter with your attorney, I will pass  
18 this matter and allow you an opportunity to confer  
19 further with your attorneys in regard to whether or not  
20 you choose to testify in this case. But in the final  
21 analysis, Mr. Hendricks, the decision as to whether to  
22 testify is yours. It belongs to you, that is the right  
23 to testify or not to testify belongs exclusively to you.  
24 It is not your attorney's right. Nor can your attorney

1 waive it for you.

2 If you desire the Court to pass this case,  
3 I'll do so, allow you an opportunity to confer with your  
4 attorneys to whether you intend to testify. On the  
5 other hand, if you are satisfied that you understand the  
6 nature of your right and that you have made a decision  
7 as to whether you choose to testify. I will hear from  
8 you what it is you desire the Court to do.

THE DEFENDANT: I'd like to pass it, Your Honor.

10 THE COURT: This case will be passed until 1:30  
11 P.m..

12 (Case passed.)

13 THE CLERK: Sheet nine, line one, Jerome Hendricks.

14 THE COURT: Mr. Hendricks, have you had an  
15 opportunity to consider with your attorneys whether you  
16 decide to testify in this case?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: What is your decision, sir?

19 | THE DEFENDANT: Waive, Your Honor.

20 THE COURT: The defense then rests. State, I will  
21 hear your arguments.

22 MR. LUFRANO: Your Honor, prior, I did have one  
23 correction. We would ask the Court notice the PSI.  
24 since the PSI --

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1       THE COURT: I'm not considering the presentence  
2 investigation report, Mr. Lufrano. The statute is  
3 silent on whether or not at a death sentencing hearing  
4 before the Court a presentence report is required or  
5 should be considered. It is clear from the law, though,  
6 that if the death sentencing hearing were before a jury,  
7 a presentence investigation report is not to be  
8 submitted or considered by the jury. And I see no  
9 reason to consider it here.

10       Some ambiguity in that, in that the provisions  
11 are not as clear as they might be as to whether or not  
12 the prohibition against consideration of the presentence  
13 report is applicable when the hearing is before the  
14 Court as distinguished from the jury. And that is the  
15 reason why I ordered it. But after considering it, I  
16 have determined that I should not consider the  
17 presentence investigation report.

18       Both sides ready for argument?

19       MR. MURPHY: Judge, with respect to the ruling,  
20 there is a conviction that we expected the Court to take  
21 notice of that was contained within the report.

22       MR. CASSIDY: Judge, we request the Court take  
23 notice of that in the PSI, the fact that he's been  
24 convicted.

1 THE COURT: I am not taking notice of the PSI at  
2 all. For any purpose.

3 ( Pause.)

4 THE COURT: My recollection is that when I ordered  
5 the presentence investigation report, I indicated the  
6 ambiguity that I am speaking of in the statute as to  
7 whether or not a presentence report is required in a  
8 death sentencing hearing, so that both sides were aware  
9 of the status of the law at that point. I just simply  
10 had not concluded at that point whether to utilize it or  
11 not, and that's the reason that I ordered it. Nobody  
12 should be taken by surprise, plus both sides are  
13 presumed to know the law, anyway.

14 MR. MURPHY: Could I have a moment, Judge?

15 We're going to ask that this matter be set  
16 over for a five-minute period.

17 MS. PLACEK: State's rested, Judge. And the  
18 defense has rested.

19 THE COURT: I know. And I have the discretion to  
20 allow them to reopen, should I choose to exercise that  
21 discretion. Pass.

22 (Case passed.)

23

24

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1 STATE OF ILLINOIS      )  
2                              )      SS:  
COUNTY OF C O O K      )

3  
4                              IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT-CRIMINAL DIVISION

5  
6 THE PEOPLE OF THE      )  
STATE OF ILLINOIS      )  
7                              )  
-vs-                      )      No. 88 CR 12517  
8 JEROME HENDRICKS      )      Before Judge Leo Holt  
9                              )  
10                              )      Thursday, August 22, 1991  
11                              )  
12                              )      Afternoon Session

13                              Court reconvened pursuant to recess.

14  
15  
16  
17                              APPEARANCES:

18  
19                              Same as heretofore noted.

20  
21  
22  
23  
24                              1058

1 THE CLERK: Jerome Hendricks.

2 THE COURT: Mr. Murphy.

3 MR. MURPHY: Judge, we will be asking the  
4 Court leave to reopen the State's case for the  
5 purpose of introducing a certified copy of conviction.

6 THE COURT: Defense.

7 MS. PLACEK: Your Honor, the certified copy of  
8 conviction relevance is the problem we have in this  
9 particular matter.

10 THE COURT: Relevancy?

11 MS. PLACEK: Dealing with, in fact, with the  
12 identification of the certified copy of conviction  
13 and the nexus of whether or not whatever certified  
14 copy of conviction you are dealing with, and we  
15 haven't seen it, is, first, a self-authenticating  
16 document and, secondly, deals with this defendant.

17 THE COURT: You'll have to run that past me  
18 again.

19 MS. PLACEK: Simply, Judge, whether or not the  
20 document, one, the identification of the document is  
21 identified with this defendant, Judge.

22 THE COURT: State, what is your response?

23 MR. MURPHY: Judge, first of all, I don't think  
24 there has been any indication -- there has been any

1 indication thus far that this is not the defendant  
2 and --

3 THE COURT: The argument is that you have the  
4 burden of showing that it is. That's what she is  
5 saying. She doesn't have to disprove it. You have  
6 to prove it.

7 MR. MURPHY: It is a certified record for  
8 Jerome Hendricks, with a case number. I believe  
9 what weight should be attached to that would be for  
10 the Court to determine.

11 MS. PLACEK: We are suggesting foundation has  
12 to still be properly laid, irrespective, Judge.

13 THE COURT: In this phase of the hearing, the  
14 rules of evidence are not in force and the Court may  
15 consider anything, without regard to the rules of  
16 evidence, so long as there is a sufficient inditia  
17 of reliability. A certified copy of a conviction  
18 imports a sufficient inditia of reliability for the  
19 Court to rely upon it. The defendant may, if he  
20 chooses, challenge that certified copy as being  
21 related to him. But in the first instance, the  
22 document is sufficiently reliable for the Court to  
23 receive it and I will so receive it.

24 Will you please mark it as Defendant's

1 Exhibit No. 3.

2 MS. PLACEK: It's not our exhibit.

3 THE COURT: People's Exhibit, I'm sorry.

4 MR. MURPHY: I am marking it as People's Exhibit  
5 No. 3 and I am tendering to the Court.

6 MS. PLACEK: Judge, may the record reflect,  
7 in seeing the certified copy, that, in fact, the name,  
8 Jerome Hendricks, is the only written matter, and I  
9 am speaking of the rest of the document being typed  
10 in the document.

11 THE COURT: I beg your pardon?

12 MS. PLACEK: On the top, Judge, the defendant's  
13 name, Jerome Hendricks.

14 THE COURT: Yes.

15 MS. PLACEK: If I might be allowed to approach  
16 the bench and show the Court what I mean.

17 Your Honor, the document is filled out  
18 and what I am stating, Judge, is that Jerome Hendricks,  
19 instead of the normal certified copy of conviction,  
20 and perhaps I'm different, used to something different,  
21 is not typed in, but, rather, written in.

22 Thank you, Judge.

23 THE COURT: The point being?

24 MS. PLACEK: Judge, the point being, number one,

1 in the matter of Jerome Hendricks and as to the  
2 matter of the certified copy of conviction, we are  
3 just asking whatever court reviews said hearing,  
4 if the document doesn't make it into the file,  
5 which sometimes happens, which sometimes happens,  
6 that Jerome Hendricks' name is printed in box letters,  
7 in what appears to be different writing than that  
8 below.

9 THE COURT: Fine. The record may so reflect.

10 MS. PLACEK: Thank you.

11 THE COURT: State, I'll hear your argument.

12 MR. CASSIDY: Judge, I believe there are three  
13 possible range of sentences. I believe the defendant  
14 can be sentenced anywhere from 20 to 100 years; he  
15 could be sentenced to a term of natural life  
16 imprisonment; or he could be sentenced to death in  
17 this case.

18 He could be sentenced anywhere from  
19 20 to 100 years based on the fact that a murder  
20 conviction in the State of Illinois carries with it  
21 a term of 20 to 60 years and, in this case, because  
22 there is aggravated factors present, the defendant  
23 then can be sentenced to the extended term, and in  
24 Illinois, extended term for this type of case would

1 be anywhere from 60 to 100 years. And I believe  
2 since his Honor found the defendant eligible for  
3 the death penalty under Section 9-1 of Chapter 38,  
4 I think Subsection C, he then, if his Honor decided  
5 not to impose the death penalty, can sentence the  
6 defendant to a term of natural life. And I believe  
7 the third possible, which your Honor has already  
8 ruled upon, the defendant is eligible for the death  
9 penalty.

10 Your Honor, the State submits that  
11 the defendant should be sentenced to death. And  
12 the State submits, your Honor, that a sentence of  
13 a term in the Illinois Department of Corrections,  
14 or a sentence of life imprisonment for this defendant  
15 would not be appropriate, your Honor.

16 The State has worked in front of  
17 your Honor before. The State realizes his Honor's  
18 views on the penitentiary, that is a filthy, vile  
19 place. I heard you use that language many times  
20 before, your Honor. And I think people who do not  
21 advocate the death penalty, the pro life people or  
22 whatever, their argument runs along the lines of it  
23 is better for someone to spend the rest of their  
24 life or a good portion of their life in the

1 penitentiary, so they can live like that, rather  
2 than doing them a favor, it's a worse punishment  
3 by spending a good portion of your life in the  
4 penitentiary or life, rather than sentencing someone  
5 to death. And I think the underlying assumption  
6 with that argument is that people, all people, the  
7 assumption goes, appreciate or have values and we,  
8 the people, value our liberty, our freedom, and we  
9 value our little things in life, like the outdoors  
10 and the changing seasons, watching one's children  
11 grow, and things like that, Judge.

12 I think the fault with that assumption  
13 is that all people are not like that. All people  
14 don't have values like that. All people don't  
15 appreciate things like that.

16 So I think for the most majority of  
17 the population, that argument would be a good one,  
18 except for people like Jerome Hendricks, because I  
19 submit to your Honor that Jerome Hendricks does not  
20 have those values. He does not value the little  
21 things in life. He does not value freedom of choice.

22 It is obvious from the record, it is  
23 obvious by his criminal history, it is obvious by  
24 what he did to Stephanie Smith, Phyllis Williams, and

1 Denise Johnson, over a period of several years.  
2 He does not value that, based upon his actions.  
3 Here is a gentleman who ties people up and rapes  
4 them. Little Stephanie Smith, he puts his arm  
5 around her, he chokes her while raping her. Phyllis  
6 Williams, he tied her with a rope and raped her.

7 He was then sentenced to the  
8 Department of Corrections, so this gentleman knows  
9 what the Department of Corrections has to offer.  
10 He is aware of what your Honor refers to. He is  
11 aware of the filthy, vile place that it is and, yet,  
12 your Honor, since he has no values, he doesn't care  
13 whether he goes back there. Less than 90 days after  
14 he's sentenced to six years, serves three years of  
15 that time, less than 90 days later, he commits the  
16 offense in front of your Honor. So, obviously,  
17 Judge, he does not appreciate those values, those  
18 little things in life, and I believe your Honor  
19 would have to recognize that some people are just  
20 evil and some people can live in that environment  
21 and live quite well, and I submit to your Honor that  
22 Jerome Hendricks is one of those types of people,  
23 that he can live in the penitentiary and survive  
24 very well and, to him, it is not filthy and vile,

1                   rather, it is his way of life.

2                   And I say that, your Honor, based  
 3                   upon his record, not just on the assumption I make,  
 4                   not just speculation on my part. Your Honor, death  
 5                   for Mr. Hendricks would still not be quite right,  
 6                   because it still wouldn't be as bad as what Denise  
 7                   Johnson went through. And after all, if Mr. Hendricks  
 8                   was sentenced to death by your Honor, he would  
 9                   probably not be executed, based upon our present  
 10                   system of appeal, probably for another ten or 15 years.  
 11                   I believe he is 30 years of age. That means he will  
 12                   live to be 40 or 45. He will see his six-year-old  
 13                   daughter grow into adulthood. He will be a better  
 14                   father in the penitentiary than, I submit, he would  
 15                   be on the street, because at least his daughter will  
 16                   know where he is at and she could visit him, if she  
 17                   so decides, and she will know where he will be. I  
 18                   would submit that he will see -- he will grow to  
 19                   middle age, into middle age. He will live at least  
 20                   three times as long as Denise Johnson lived, because,  
 21                   after all, Denise Johnson was 12 years old when she  
 22                   died.

23                   So I submit that death for Mr. Hendricks  
 24                   is not good enough because, after all, your Honor,

1 Mr. Hendricks will be fed every day. When time does  
2 come, if it does come, if your Honor sentences him  
3 to death, he will have the advantage of having  
4 clergy there, if he so decides, something Denise  
5 Johnson did not have. He will allow himself to be  
6 at peace with himself and his God, if he so decides,  
7 something Denise Johnson never had a chance to do.  
8 He will be able to say goodbye to his loved ones  
9 and they'll have the opportunity to say goodbye to  
10 him. He'll have the opportunity to say those things  
11 that he maybe never said before to those people and  
12 they to him. Denise Johnson, Judge, never had that  
13 opportunity.

14 And when time comes, time for him to  
15 die, Judge, he will take and -- he will be given  
16 notice. He will be able to prepare for it. He'll  
17 be walked down a hallway with clergy and friends  
18 probably right there, up to the last minute, and will  
19 not be in a dirty, vile garage floor, where garbage  
20 bags are, and no one is going to pull his shirt up  
21 over and start choking him. No one is going to  
22 penetrate him anally, like was done to Denise Johnson.  
23 And no one is going to choke the life out of him.  
24 But, rather, he'll be taken in and injected with a

1 needle and he will pass away. That's a nice, sterile  
2 environment.

3 So if you impose the death penalty on  
4 this man here, it still is not as bad as what happened  
5 to Denise Johnson.

6 Judge, I ask you to give death to  
7 this man because, first and foremost, I submit to  
8 you that the law requires it. I submit to you that  
9 there are no sufficient mitigating factors sufficient  
10 enough to preclude him from dying. And that's my  
11 primary argument and, Judge, I make that argument  
12 knowing full well that I am not the one who signs the  
13 order. I don't have to put my signature on the half  
14 sheet and I go home tonight knowing that I'm not the  
15 one who sentenced someone to death. But I make that  
16 argument in good faith, based upon the law, based  
17 upon his background, based upon the crimes he's  
18 committed, and I submit to you, Judge, that he was  
19 no little boy when he committed these crimes. He  
20 committed them when he was 27 years of age. He raped  
21 two other girls previous to this. He was in the  
22 penitentiary. His freedom of choice. He knew what  
23 was going on. He is no young man, Judge.

24 And I make the argument to you, Judge,

1 as if you were a jury. I make the argument, asking  
2 you not to feel guilty about it, because you should  
3 not; I ask you to just follow the law, as I would a  
4 jury, because you did not do anything to him, your  
5 Honor. Mr. Jerome Hendricks did everything to himself.  
6 So I make the argument, Judge, to sentence him to  
7 death, based upon the law and the facts, and feel no  
8 guilt or remorse, because all you are doing is follow-  
9 ing the law as if there were 12 jurors here, Judge.

10 I know full well that Jerome Hendricks  
11 is a human being, Judge. However, because he is a  
12 human being does not make him humane. He is a  
13 person, but it does not mean he has a personality,  
14 Judge. Mr. Jerome Hendricks, your Honor, he is an  
15 animal. He is an animal of the worse type, because  
16 he is cloaked in a human's body and he puts women  
17 around him at ease and then he attacks. So although  
18 you have a human being in front of you, and I expect  
19 you to consider it, although the law says you should  
20 just consider the facts and the evidence and then  
21 apply the law to the facts, I know you don't sit up  
22 there in a vacuum, I know you are a human person, I  
23 know you have feelings; but I know that Jerome  
24 Hendricks had freedom of choice and he is not a

1 human being as we know one to be.

2 I am also aware, your Honor, that  
3 now, you can consider, based upon the law, you can  
4 consider Denise Johnson, Judge, because based upon  
5 the Supreme Court case recently, the State has  
6 legitimate interest in counteracting the mitigating  
7 evidence, which the defendant is entitled to put in,  
8 which there has been no mitigating evidence, I submit,  
9 by reminding the sentencer that just as the murderer  
10 should be considered as an individual, so too the  
11 victim is an individual whose death represents a  
12 unique loss to society and, in particular, to his  
13 family or her family. The victim, in her own words  
14 and in the Court's own words, Judge, is no longer a  
15 faceless stranger at the penalty phase of a capital  
16 trial.

17 And, Judge, I say this to you, your  
18 Honor, in good faith, but I ask you, when you do  
19 decide what to do with Jerome Hendricks, I ask you  
20 to consider that your sentence, Judge, you would  
21 impose upon Jerome Hendricks would not only state the  
22 law and the value you place on his acts, but also  
23 the value you place on Denise Johnson. It is a heavy  
24 burden you have, your Honor, but I believe -- I don't

1 think you've ever run across a person, when you're  
2 on the bench, your Honor, like Jerome Hendricks,  
3 who shows no remorse, whatsoever, throughout every  
4 stage of this proceeding. Judge, death would be  
5 too good for Jerome Hendricks, but that's all we have  
6 in this state.

7 If you recall, your Honor, I believe  
8 there was a lynch mob ready to get at Jerome Hendricks.  
9 I think it came out during the motions, but they  
10 didn't react, they waited, your Honor. The family  
11 waited, during the course of this trial. The people  
12 in the community have waited, your Honor. They did  
13 not take the law in their own hands. I submit to  
14 your Honor that the people await your sentence and  
15 I submit to your Honor that the law mandates, based  
16 upon the law and the facts of this case and the  
17 criminal history of Jerome Hendricks, that he be  
18 sentenced to death, Judge.

19 THE COURT: Defense.

20 MS. PLACEK: Very briefly, your Honor.

21 The Court knows this isn't the first  
22 time I've gotten up and argued against the death  
23 penalty. Maybe not like Mr. Cassidy spoke before  
24 your Honor and maybe I don't have the wealth of

1 experience that Mr. Cassidy spoke of, when he spoke  
2 in his closing statements, but the simplicity of it,  
3 Judge, is every time I stand before a court or a  
4 jury and speak against the death penalty, I often  
5 wonder if I was a better lawyer, whether we would  
6 have even made this particular section of the case.

7 It is odd that I always hear the  
8 State speak in terms of death, in terms of too good  
9 for him or just let him sit on death row for ten or  
10 15 years and, in fact, what we'll have is we'll have  
11 him living some sort of very simple and easy life.  
12 And what will happen is probably some -- strike that --  
13 some higher court will come about and reduce the  
14 sentence, and everything will be fine, because, you  
15 know, what you do doesn't matter, Judge.

16 Well, Judge, this Court knows what  
17 is happening and what trends are happening in the  
18 law, and this Court knows that, number one, death  
19 row is a place where a person sits in a place  
20 smaller than the bench that encompasses your Honor,  
21 for 23 of the 24 hours of the day, while awaiting  
22 this appeal.

23 This Court also knows that the only  
24 time that death row inmates are let out for exercise

1 is when they are completely shackled and then alone.

2                   This Court also knows that the trends  
3 in the law isn't necessarily for the lengthening of  
4 these kinds of appeals, as speculated by the State,  
5 but there is legitimate moves in Congress right now  
6 to shorten them. So, therefore, the falacy that he  
7 is going to somehow, if you sentenced him to death,  
8 and by the way, it is your choice, it is your choice  
9 to pick one of the three alternatives the law offers  
10 you, so rather than saying that the law mandates it,  
11 say that you want him to die, because that's the  
12 very reality of it with the changes of the law, but  
13 let's go one step further, why would you want to.

14                   Well, because he killed a young girl.  
15 The Court has found that to be true and since the  
16 Court has found it to be true, let's go through what  
17 good society, in fact, will have if this Court lowers  
18 itself and lowers its own humanity to somehow kill  
19 Jerome Hendricks.

20                   Start, first, with the very obvious  
21 thing. Is there anything anyone in this courtroom  
22 right now can do to lessen the pain of the last three  
23 years that the family faced. There isn't. There is  
24 no way humanly possible that that child can be put back

1 upon this earth. So, therefore, by killing  
2 Mr. Hendricks, this Court isn't accomplishing that.

3 Well, this Court, by killing  
4 Mr. Hendricks, possibly, is somehow sending a message  
5 to the community. Let's go to the logical conclusion  
6 of what that message is. That message is simply  
7 this, number one, it is wrong to kill and we are  
8 going to show you that it is wrong to kill by killing  
9 someone. This sort of institutionalized murder is  
10 simply that. It shows that this society, like the  
11 only other industrial countries of the world, Russia  
12 and South Africa, hold human life in some sort of  
13 contempt and that contempt is simply this, that we  
14 admit that certain things are wrong and an abomination,  
15 in admitting they're wrong and an abomination, what we  
16 are going to do in some sort of false name of justice,  
17 is get down with you, I'm speaking of the person that  
18 we are saying, to characterize the State's Attorney's  
19 words, is an animal, because he is not, he is a human  
20 being just like you and I, and we are going to do to  
21 him what he supposedly did to somebody else.

22 Well, let me put it this way, the  
23 logic of that argument sort of falls flat, because  
24 how can you tell anyone violence is wrong by doing

1 violence.

2 Mr. Cassidy said there was no  
3 mitigation in this matter. I would point out that  
4 the law takes in account anything that this Court  
5 feels and even this Court's sentiments as mitigation.  
6 I would further point out to the Court that, number  
7 one, one of the things that the Court can take into  
8 consideration is, in fact, the background of the  
9 defendant and what exactly the Court has seen in  
10 this particular case.

11 It is particularly strange and I con-  
12 sidered it for awhile, except I do have a duty to  
13 defend, just sitting there and allowing some higher  
14 court to call me incompetent, because Mr. Hendricks'  
15 family wasn't here, on the theory that possibly I  
16 would be giving him another issue on appeal, stating  
17 that Defense Counsel, myself and Mr. Lufrano, simply  
18 sloughed off during the hearing and offered no  
19 mitigation. I or Mr. Lufrano have no idea why the  
20 family isn't here.

21 MR. CASSIDY: Objection, Judge.

22 THE COURT: The objection is sustained.

23 MS. PLACEK: The simplicity of the argument  
24 goes like this, Judge. The Court, in experience,

1 and the Court, in its life, has seen things, and  
2 the oddity and the key to this particular character  
3 is simply this, Mr. Hendricks stands before you and  
4 as he stands before you, he stands alone. And in  
5 this particular issue, you have heard of his child,  
6 the State brought it up, and you also heard that he  
7 does have a family. The impact of this becomes that  
8 you are taking out a member of the community, if you  
9 do sentence him to death, and you are telling the  
10 community what. Well, I'm sure the State's constant  
11 argument is the fact that you are telling them that  
12 there is some kind of repercussion or there is, and  
13 I'm sure it will come, something wrong with killing  
14 someone by, in fact, punishing someone.

15 Punishment can be given in years.  
16 We always spoke about the illogicalness of killing  
17 someone for the idea, for the idea of telling them  
18 that killing is wrong. But as for the idea that  
19 somehow you are going to send a message to the  
20 community that, somehow, you are going to stop killing  
21 by killing him is absurd.

22 The death penalty has been around  
23 since the Code of Hammurabi. The death penalty has  
24 been in this country almost continuously for this

1 country's entire history. We used to execute people  
2 for anything. We used to execute people for the  
3 color of their skin. As a matter of fact, there is  
4 some, because they are disproportionate in number,  
5 the minorities on death row would say we still do  
6 that. But the point simply becomes this. Every time  
7 people talk about the argument about, somehow, if we  
8 really kill someone and we send someone to whatever  
9 sentence of execution we have, that the killing will  
10 stop. The absurdity of that argument is made a lie  
11 by the headlines, because after almost 200 years of  
12 continual state killing, then why, not one month ago,  
13 there is Jeffrey Dahmer and Evans, and why is there  
14 this constant killing every Monday, when we pick up  
15 the paper and we find out, in fact, that more and  
16 more and more people have killed. So, obviously, the  
17 death penalty isn't a cure-all for that.

18                   Then what good is it, and if this  
19 Court sentences Mr. Hendricks to death, it isn't  
20 mandated by the law, it isn't your only choice, it  
21 isn't justice. It's one thing, it's revenge and  
22 that's all it is. And when I say that's all it is,  
23 I would ask this Court, when it makes its deliberation,  
24 to look deep into its heart and when it looks deep into

1 its heart, when this Court considers that one of the  
2 mitigating factors is the fact that Mr. Hendricks --  
3 that prison is not an alternative, the case law in  
4 Illinois has said that, I would point out, Judge,  
5 that Mr. Hendricks pled guilty to the certified copy  
6 the Court has before it.

7 MR. CASSIDY: Objection.

8 THE COURT: No, overruled, Mr. Cassidy. I'll  
9 permit it.

10 MS. PLACEK: That Mr. Hendricks pled guilty to  
11 the charge for six years, that the Court has before  
12 it.

13 MR. MURPHY: Objection. That argument is not  
14 based on the evidence. It's actually incorrect.  
15 There was no plea of guilty on that case.

16 MS. PLACEK: I am going by the presentence  
17 investigation.

18 THE COURT: The certified copy, which is what  
19 I am going by, would tend to indicate that there was  
20 a trial in the case. The objection is sustained.

21 MR. CASSIDY: Thank you.

22 MS. PLACEK: The interesting thing, if there  
23 was a trial and the presentence investigation is  
24 incorrect, the point simply being this, Judge, if

1 that's true, the Court knows and the Court can see  
2 and take judicial notice of the law and wonder why  
3 some other judge gave him the minimum.

4 MR. CASSIDY: Objection.

5 THE COURT: The objection is sustained.

6 MS. PLACEK: The simple point being, Judge,  
7 that the State has presented no evidence in this  
8 case that simply Mr. Hendricks, and the State is  
9 quite right, prison is a filthy place, prison is a  
10 terrible place, prison is the type of place where  
11 people who kill children or molest children are made  
12 to suffer even more than that which is intrinsically  
13 horrendous about the prison itself, because every  
14 prisoner there has, in fact, family outside, every  
15 prisoner there, or at least the majority of the same  
16 has, in fact, children, and, in some way, they take  
17 out their frustrations on those who do children,  
18 more than they do about anyone else. So the idea  
19 that, somehow, Mr. Hendricks can adapt to this and  
20 it is correct, it is a filthy environment, is an  
21 absurdity, because if you can get along and if you  
22 can adapt somehow to a torture chamber, which is a  
23 matter of fact, you will be made to be the lead victim,  
24 then quite frankly, Judge, then quite frankly, the

1 punishment of letting Mr. Hendricks live is far  
2 greater than that of letting him die, because  
3 besides accomplishing nothing and, again, the choice  
4 is yours, no one else's, the simplicity is this,  
5 if you sentence Mr. Hendricks to death, and the only  
6 motive of it will be, and the only logical conclusion  
7 of it will be, because as pointed out by the presentence  
8 investigation, he can survive --

9 MR. CASSIDY: Objection.

10 MS. PLACEK: Strike that, I withdraw it.

11 As pointed out by the lack of evidence  
12 by the State, meaning that they produced no one from  
13 the prison to prove that he is a disruptive force;  
14 that, in fact, they presented no one from the prison  
15 to show that somehow he is unmanageable, that he  
16 received what is commonly known as any tickets while  
17 in the prison --

18 MR. CASSIDY: Objection. Improper argument.

19 THE COURT: No, overruled.

20 MS. PLACEK: That he can live in a prison  
21 situation, without causing more of a burden to  
22 society; not only that, but if we are going to give  
23 the normal argument that's normally given in favor  
24 of the death penalty, dealing, in fact, with expense.

1 Judge, the Court knows that if this Court gives it  
2 and if this Court gives the defendant a death  
3 sentence, that's an automatic appeal to the Supreme  
4 Court. Not only an automatic appeal to the Supreme  
5 Court, Judge, but quite frankly, the Court knows  
6 from its own background, that the costs, as I  
7 previously described, to keep a man in the sort of  
8 conditions death row has, and that the cost of the  
9 appeals, which do go up, are far greater than, quite  
10 frankly, the high cost of simply keeping a man in  
11 prison.

12 MR. MURPHY: Objection.

13 THE COURT: Mr. Murphy, I am going to permit  
14 it. I am fully aware that, under normal circumstances,  
15 that argument should not be allowed, but it seems to  
16 me to be rationally responsive to Mr. Cassidy's  
17 argument in regard to the defendant's ability to  
18 survive within the penitentiary and other aspects  
19 of it which, of course, are just as inappropriate,  
20 in my judgment, and irrelevant, if you please, and  
21 maybe not inappropriate, but irrelevant to the issues  
22 before the Court, and the Defense has a right to  
23 respond to it. The objection is overruled.

24 MS. PLACEK: So we come again, Judge, to one

1 motive. The one motive is simply this, revenge.  
2 Let's break that up into two ways. Number one,  
3 revenge would give the family any satisfaction, a  
4 death for a death. The obvious emotional answer is,  
5 of course it will. Death means death.

6 Does it, or does it take part of the  
7 humaness out of all of us in that satisfaction of  
8 the blood lust. Haven't we gotten above that in  
9 two thousand years. Not only haven't we gotten above  
10 it in two thousand years, but, quite rightly,  
11 Mr. Cassidy asked you to look to the victim and  
12 as part of the recent Supreme Court case, again, you  
13 got to know her and saw her picture during the trial.  
14 And believe me, no one wanted this to happen to her.

15 But on the other hand, Judge, while  
16 being momentary satisfaction, she is in a place,  
17 quite frankly, that, well, let's put it this way,  
18 the revenge motive, because of the child's age, has  
19 been purified and isn't present within that child.  
20 But the point simply being is who then will the revenge  
21 affect most. And I am speaking of the blood lust.  
22 Blood for blood. And I would ask the Court to look  
23 into its heart and I would ask the Court to consider  
24 this for one moment, that if this Court kills Jerome

1                   Hendricks, won't this Court be giving up part of  
2                   its humanness and in giving up part of its human-  
3                   ness, it is a decision, as spoke of by Mr. Cassidy,  
4                   that only this Court can give, but in somehow doing  
5                   this hardening, in somehow going through this  
6                   process, would this Court become less of a judge,  
7                   less of a human being, less of a man. It's a question  
8                   only this Court can answer.

9                   But just as this Court sits in  
10                  judgment on people and just as this Court, when  
11                  thieves, burglars, robbers, rapists and murderers  
12                  come before it and it's asked to sit in judgment  
13                  and say you are wrong because you violated the law  
14                  and, somehow, something clicks in the back of this  
15                  Court's mind and says to itself, and once it became  
16                  easier for you to violate the law, once you did it,  
17                  once you got over that initial threshhold, then it  
18                  became easier and easier and easier and easier, and  
19                  you lost something of your moral fiber. You lost  
20                  something of yourself in your transgression of your  
21                  beliefs.

22                  I am asking this Court to search its  
23                  own mind and if this Court kills Jerome Hendricks,  
24                  because that's what this Court will be doing, whether

1 this Court will lose something of its own principles,  
2 something of its own moral fiber.

3 It's interesting, Mr. Cassidy said  
4 there was a lynch mob. Unfortunately, I'm too much  
5 of an advocate to restrain this comment. That's the  
6 same lynch mob as described by the police, which  
7 this Court, in the ruling of the motion, described  
8 the police in the telling of it as being less than  
9 credible. In other words, quite frankly, we always  
10 challenged that. But even if there was, is that what  
11 this Court wants to become, a lynch mob, with all the  
12 connotations that come from it.

13 If that's what justice is, then we  
14 might as well just simply do away with building and  
15 we might as well simply go and not even start over,  
16 but simply arm every citizen and say take right onto  
17 your own self. It's true this Court can examine the  
18 victim and in the examination of the victim, I am not  
19 saying that the minimum sentence is proper for  
20 Mr. Hendricks. But what I am saying, Judge, that in  
21 this case and in many others, death is not the  
22 sentence, because there has been no demonstration  
23 that this man is an animal and when I say is an  
24 animal, he will be caged like one. He will be held

1 like one, no matter what the decision of this Court  
2 is.

3 But on the other hand, by the lack of  
4 showing that he can't get along in prison, in prison,  
5 it hasn't been shown that he is an animal, so rabid  
6 that he has to be put to sleep like a dog.

7 But go one step further. Reference  
8 was made, well, he'll see his six-year-old daughter  
9 grow up. Judge, as a man, I would ask the Court to  
10 put yourself in Mr. Hendricks' place and I would ask  
11 the Court, quite frankly, to look into its own mind  
12 and ask whether or not, viewed from Statesville or  
13 Menard or wherever, that's a way of watching your  
14 six-year-old daughter grow up. I would ask, quite  
15 frankly, because we're not speaking of the alternative  
16 of either kill him or let him go, there is proper  
17 punishment here, as enunciated by the statute, and  
18 the proper punishment is present and just as painful,  
19 and when I say just as painful, the years of longing  
20 to touch his child and not being able to, the years  
21 of longing to touch his wife and not be able to, the  
22 years of wanting to touch his mother or hug them or  
23 be with them, he is going to be missing those, no  
24 matter what this Court is doing.

The obvious argument is, quite frankly, well, so did Denise Johnson, and that's correct. But then, again, no matter what you do will bring her back. But the decision is simply this, there will be Christmases when this Court will be with its family, there will be holidays when this Court will sit around with its family and feeling its warmth and feeling its love.

Now, when the Court sits back in its reflection with its family and feels this warmth, does the Court want to somehow think in the back of its mind that, somehow, he killed a man, because that's what it would be, your decision, and somehow, through this, there was a lessening of his own principles.

Thank you, your Honor.

**THE COURT:** State.

MR. MURPHY: Are you going to allow us the opportunity to respond, Judge?

THE COURT: Yes, I will.

MR. CASSIDY: Judge, the only thing I would like to comment upon is the attempt to make you feel guilty in some way and I think it is totally improper. It's unbelievable that that attempt would be made. You should never feel guilty for anything you do

1 up on that bench, your Honor.

2                   A lot of times, you don't do what we  
3 want, a lot of times, you do what we want; but never,  
4 never should you feel guilty for what you do, Judge.  
5 You took an oath, and I know you follow that oath.  
6 I never had reason to believe that you didn't. And  
7 I'm sorry that you had it put to you that way, somehow,  
8 some Christmas, you will be with your family and you  
9 have to think back and somehow feel guilty for what  
10 you're about to decide. You do the best you can, your  
11 Honor, and that's all we can ask.

12                 THE COURT: Sentencing decisions are the most  
13 difficult when a capital sentence is even, not even  
14 remotely involved. Sentencing on a Class 4 Felony  
15 is difficult, because, ultimately, we are talking  
16 about the potential for depriving people of liberty  
17 and/or in this case their life.

18                 I have listened to the arguments of  
19 Counsel in consideration of the facts underlying this  
20 case. And I can say to you that as I view this case  
21 and the evidence that has been presented in this  
22 phase of the hearing, that there are a number of  
23 aggravating factors and no mitigating factors which  
24 are sufficient to preclude the imposition of the death

1       penalty, that is no statutory mitigating factors.

2                   But the inquiry doesn't stop there  
3       and just as a jury is not bound to stop the inquiry  
4       once it determines that there are no statutory  
5       mitigating factors, neither is the Court, when it  
6       sits without a jury, which even more compounds the  
7       difficulty of the problem.

8                   I'm going to take this matter under  
9       advisement. I would render a decision tomorrow, but,  
10       unfortunately, I have another responsibility that  
11       keeps me from sitting tomorrow. Consequently, with  
12       great reluctance, I'm going to have this case in my  
13       head over the weekend, see if I can grapple with some  
14       of the concepts that have been presented to me by  
15       both sides.

16                   Let me suggest to you, before we  
17       part, this case for the afternoon, however, that  
18       feelings of guilt are not remotely one of the things  
19       that I will be considering. I can abhor some of  
20       the decisions that I make on the fact that I am  
21       required to make them. But if I come to the position  
22       where they are so uncomfortable to me, I have an  
23       alternative that no one can prevent me from exercising.  
24       So if on a day to day basis, you see me here, you can

1 conclude that I am not suffering from pains of  
2 guilt.

3 If we can reconvene the hearing  
4 on this case on Monday morning, I will be in a  
5 position to render a decision.

6 Are you available?

7 MS. PLACEK: I will make myself available,  
8 Judge.

9 THE COURT: This matter is continued until  
10 9:00 A.M., Monday morning, 9:30 A.M., Monday morning.  
11 Order of Court, August 26.

12  
13  
14  
15 (Whereupon, the above-entitled  
16 cause was continued to the  
17 26th day of August, 1991.)  
18  
19  
20  
21  
22  
23  
24

1 STATE OF ILLINOIS      )  
2                              )      SS.  
COUNTY OF COOK      )

3                              IN THE CIRCUIT COURT OF COOK COUNTY  
4                              COUNTY DEPARTMENT-CRIMINAL DIVISION

5 THE PEOPLE OF THE      )  
6 STATE OF ILLINOIS      )  
7                              )  
8                              V                              )      No. 88 CR 12517  
9                              )  
10 JEROME HENDRICKS      )

11                              REPORT OF PROCEEDINGS had in the above entitled  
12 cause, before the Honorable LEO E. HOLT, Judge of said  
13 court, on the 26th day of August, A.D., 1991.

14                              APPEARANCES:

15                              HON. JACK O'MALLEY,  
16                              State's Attorney of Cook County, by  
17                              MR. JOHN MURPHY and  
18                              MR. SCOTT CASSIDY,  
19                              Assistant State's Attorneys,  
20                              appeared for The People;

21                              MR. RANDOLPH STONE,  
22                              Public Defender of Cook County, by  
23                              MS. MARIJANE PLACEK and  
24                              MR. VINCENT LUFRANO,  
                                    Assistant Public Defenders,  
                                    appeared for The Defendant.

1 THE CLERK: Sheet 6, Line 17, Jerome  
2 Hendricks, in custody.

3 (Defendant Present)

4 THE COURT: All right. Mr. Cassidy, is  
5 Mr. Murphy going to be joining you?

6 MR. CASSIDY: Yes, Judge. He should be  
7 coming out that door in a moment.

8 (Pause)

9 MR. MURPHY: Sorry, Judge. I was in another  
10 courtroom.

11 THE COURT: This matter is here this morning  
12 for sentencing pursuant to the provisions of  
13 Section 9-1(b) of the Criminal Code. The matter  
14 was before the Court on Thursday of last week and  
15 also on Tuesday of last week.

16 On Tuesday the Court found the defendant-- I  
17 guess it was on Thursday, the 22nd, the Court found the  
18 defendant eligible for the imposition of the death  
19 penalty pursuant to the requisite provisions of  
20 the Code. The Court also heard evidence and  
21 argument in aggravation and mitigation.

22 The lawyers who appear regularly in my  
23 courtroom probably are aware of the fact that it's the  
24 Court's opinion that in sentencing a defendant almost

1 in any case, and certainly in a case such as this,  
2 The Court has an obligation to articulate the basis  
3 for the decision that it reaches. In a case such  
4 as this the defendant's right to his day in  
5 court clearly encompasses his right to know the  
6 reasons that the Court indulges in to reach the  
7 decisions that it makes.

8 Counsel on both sides of this case  
9 also have a right to know the reasoning process of  
10 the Court. The survivors of the victim in this  
11 case have a right to know, and the public has a  
12 right to know.

13 I have said many times that sentencing is  
14 a difficult task for the Court. I think that's true  
15 not only of this Court, but of every Court that finds  
16 itself confronted with this obligation of sentencing,  
17 and particularly where the State has requested, pursuant  
18 to the statute, that the Court impose a death sentence.  
19 So I have spent a good part of the weekend since  
20 Thursday reviewing the facts of this case and the  
21 law, and searching the conscience of the Court and  
22 trying as nearly as humanly possible to assess the  
23 conscience of the community to see if I can come to  
24 a decision that approximates as nearly as possible

1 the sense of this community.

2                   The arguments made to me by the State  
3 and the defense were not particularly helpful. The  
4 argument of the State focuses primarily upon the  
5 worthlessness of the defendant. They characterize  
6 him as an animal who is quite capable of adapting  
7 his life to the lifestyle of the penitentiary and  
8 leading a lengthy life in that environment.

9                   And I'm not at all certain that that  
10 approach to the problem is relevant in any way. On  
11 the other hand, the defense characterizes the  
12 proceedings as one in which the Court ought to  
13 take into consideration its own conscience and to  
14 alleviate the Court's conscience of the guilt that  
15 is associated with sentencing a person to death.

16                   That argument, of course, has no merit  
17 whatsoever. It's an argument which ought better be  
18 addressed to the legislature or the consciousness  
19 of the community. It invites the Court to nullify  
20 the capital sentencing structure of the state, which  
21 I have no right to do.

22                   Some of you who are here today probably  
23 have heard me say that I share the view, legal view,  
24 of a number of other judges in this state, some of

1 whom sat on The Illinois Supreme Court, that the  
2 capital sentencing structure of Illinois violates  
3 the Constitution of The United States. That is  
4 my own legal view.

5                   However, The Illinois Supreme Court,  
6 The United States Court of Appeals for the 7th  
7 Circuit, which has jurisdiction over Illinois  
8 Courts, have not seen fit to declare this statute  
9 unconstitutional, and for that reason, if no other,  
10 I am bound to enforce this statute until The United  
11 States Supreme Court or some other reviewing court  
12 declares it to be unconstitutional, and I am not  
13 permitted to nullify the statute because, in my  
14 personal judgment, it offends the constitution.

15                   The victim impact statement proffered  
16 in this case likewise was of little help to the  
17 Court. It provides the Court with information which  
18 seems to me to naturally flow from the circumstances  
19 of this case, and is present in almost every case  
20 of this nature. It addresses the pain, the agony,  
21 that the survivors suffer. And I am fully aware  
22 of that.

23                   That's not only in this case. That's  
24 true in every murder case. And I sympathize and empathize

1 with the survivors of the victim of this case, but  
2 that sympathy and empathy hardly justifies the  
3 imposition of the death penalty.

4 Now, this defendant is eligible for  
5 the death penalty in a number of different ways, it  
6 seems to me. He's been found guilty of a felony  
7 murder which is a qualifier. He qualifies by virtue  
8 of the fact that murder in this case was committed  
9 in what might--can only be characterized, it seems  
10 to me, as exceptionally heinous and brutal, indicative  
11 of wanton cruelty.

12 There are no statutory mitigating  
13 circumstances that the Court can point to in this  
14 case. And if that were the end of the inquiry, it  
15 would seem to me that the death penalty would  
16 naturally and normally flow from those facts alone.  
17 But that's not the end of the inquiry.

18 As the sentencing body in this case I  
19 have the same prerogatives that a jury has, and a  
20 jury has wide latitude in determining whether or  
21 not to impose the death sentence even though there  
22 be no statutory mitigating factors.

23 And so for a moment I will address the--  
24 Address part of the argument, part of the argument of the

1 State and part of the argument by the defense to  
2 help you, if I can, to understand what it is that  
3 has been motivating the Court. And I am fully  
4 aware that some of you have heard me say some of  
5 these things before, but bear with me if you please.

6 The philosophy of sentencing, it seems  
7 to me, comes into sharpest focus when we are talking  
8 about sentencing in a capital case, and if there is  
9 ever a time when we ought to review the philosophical  
10 underpinnings of sentencing it would seem to me that  
11 this is the case in which to do it.

12 Starting with the prevalent recurring  
13 theories in regard to sentencing, and taking a look  
14 at them as it impacts on capital sentencing to see  
15 what is appropriate here, we look, of course, to  
16 deterrence, rehabilitation, isolation, and retribution.

17 Mr. Murphy, I am fully aware that you and  
18 I have discussed this deterrence theory and we share  
19 opposite views. I respect your view. As I indicated  
20 to you, it is probably shared by more people than  
21 not, but the fact that it is the majority view does  
22 not make it a correct view.

23 It just means more people agree, but it  
24 seems to me that the evidence is very clear that

1 capital sentencing is not a deterrent to crime.  
2 There is nothing about it-- There is no empirical  
3 evidence down through the history of capital  
4 punishment, which has been with us almost since  
5 the beginning of time, that suggests that capital  
6 sentencing will deter crime.

7           Throughout the history of man we have  
8 imposed capital punishment on persons who have  
9 violated rules of society, and some societies,  
10 including the one from which your law cometh, all  
11 crimes were capital crimes, early on. And at one  
12 time or another in England there were over two  
13 hundred capital crimes on the books.

14           And capital punishment came to this country  
15 along with the Pilgrims, and we have put people to  
16 death for crimes which now would shock our conscience.  
17 We've put people to death for blasphemy, adultery, witch-  
18 craft. All sorts of victimless ideological positions  
19 have resulted in death of human beings at the hands  
20 of government with a view towards making a better  
21 society. And we have hung them, shot them, executed  
22 them, beheaded them, poisoned them, gassed them, and  
23 as nearly as we can determine the murder rate is  
24 escalating rather than diminishing.

1                   I woke up this morning to the  
2 television telling me that eight murders had  
3 been committed over the weekend. There are those  
4 who argue that the fault lies not with capital  
5 punishment, but the failure to use it frequently  
6 enough, and that if we used it more frequently  
7 it would bring about a diminution in the crime rate.

8                   I doubt that very seriously, and we  
9 will have to probably wait and see what the next  
10 decade brings in that regard before we can make any  
11 definitive assertions about it, but it would seem to  
12 me that the evidence is not likely to support it,  
13 that an escalation in the execution of capital  
14 sentences is going to have a diminution in murder.

15                  And so I do not think that the concept  
16 of deterrence is of much value. I further think that  
17 it's immoral. It's immoral in the sense that a  
18 defendant ought to have punishment imposed upon him  
19 or her on the basis of his or her conduct and his  
20 or her character, and not with a view towards affecting  
21 the conduct of some unknown person at some unknown  
22 time.

23                  And as difficult as that may be to do,  
24 nonetheless, to philosophically accept the proposition

1 that one can affect an unknown person's conduct  
2 by what is done to a person before the Court, in  
3 my judgment devalues the humanism of a person  
4 before the Court and, indeed, perhaps maybe the  
5 Court itself.

6                   So I do not sentence with a view  
7 towards deterring others, largely because I don't  
8 think that's possible. I don't think it's possible  
9 for a number of reasons, not the least of which is  
10 the secrecy in which the punishment is carried out  
11 so that the message, if there is to be one, is  
12 demonstrated to a relatively insignificant portion  
13 of the population.

14                   Secondly, the concept of rehabilitation  
15 obviously is of no significance whatsoever when one  
16 talks about capital punishment. I'm certain that  
17 we're not talking about efforts at rehabilitation. And  
18 so it is not of much value to talk about the inability  
19 of our penal system to rehabilitate because, in the  
20 first instance, we are not talking about rehabilitating.

21                   The question of isolation which, in my  
22 judgment is the quintessential justification for  
23 the criminal justice system, to take those persons  
24 out of the community that have demonstrated either by

1       their repeated violation of the law, or by the  
2       heinousness of the crime which they find themselves  
3       guilty of, that they are a present and ongoing  
4       danger to the rest of us, and their ability to  
5       live harmoniously among us is so wanting, that we  
6       have a right to prohibit their participation in an  
7       organized civilized society-- And I suppose the  
8       essence of isolation is capital punishment.

9               Whether that is justified in every  
10      case where permanent isolation may be the answer  
11      is highly doubtful, and the law does not mandate  
12      such a result.

13               And such an isolation, at least in the  
14      statute, that is to say once having determined that  
15      a defendant meets the criteria for permanent isolation,  
16      therefore, we ought to impose capital punishment  
17      without any other considerations, violates the 8th  
18      Amendment of The United States Constitution. So  
19      there is something other than isolation that has to  
20      be taken into consideration.

21               The other sentencing criteria is  
22      retribution, vengeance, punishment, which I also  
23      believe has a proper place and proper role to play  
24      in the criminal justice system, and I take it that to

1 some extent at least that is what the State is talking  
2 about; retribution.

3 The difficulty that I have with that  
4 proposition, however, is I have an extremely difficult  
5 time rationalizing and equating death with punishment.

6 It strikes me as being quite curious,  
7 difficult to put in its perspective, how the natural  
8 termination of life, the end result of life, is a  
9 punishment. I find it inconsistent with most of the  
10 theological positions that exist around the world  
11 that I am aware of, and to be sure, I am not aware  
12 of all of them and not deeply involved with an  
13 understanding of any of them, but to the extent  
14 that I have an understanding of the theological and  
15 spiritual side of life, I know of none that champion  
16 death as being punishment.

17 Rather, as I understand it, death is  
18 characterized as being the exact opposite. In any  
19 event, I don't see how the maximum level of punishment  
20 can be imposed on a person by terminating their life.  
21 That does not mean, of course, that that degree of  
22 punishment I am speaking of, that is a continuing  
23 of life, necessarily follows because we seek to  
24 impose some measure of retribution on the defendant.

The State argues to me that to incarcerate this defendant for any period of time would have no significant meaning to him. They judge that by virtue of the fact that he has been incarcerated once, and when released from the institution, and while on parole, and not having been out of the institution for any appreciable period of time, this offense was committed, thus indicating his lack of fear or trepidation in regard to being incarcerated.

And I take it from the way I understood Mr. Cassidy's argument to me, is that even assuming my characterization of what penitentiary life is as he understands my characterization, that also is not a sufficient punishment for this defendant.

That, however, does not seem to be the position of persons who have served lengthy sentences in the penitentiary, some of whom have served them here in Illinois. One of our oldest prisoners at the time of his release, at any rate, was Nathan Leopold, who went into the institution at seventeen or eighteen years of age and was paroled in his early sixties, having spent all of his youth in the penitentiary without ever giving up the desire to be released.

1                   We have another inmate in the Illinois  
2 penitentiary system that is similarly situated, who  
3 strives at every opportunity to be released. And I  
4 take that to mean that one does not accommodate  
5 one's self to penitentiary life to the extent that  
6 the desire to be free abates entirely. It's always  
7 an aspiration because it's consistent, I believe,  
8 with the human personality.

9                   Having said all those things, when you  
10 turn to look at this defendant, the crime of which he's  
11 found guilty of, it is clear, it seems to me, that  
12 he clearly represents a defendant that society cannot  
13 tolerate in our midst.

14                   It clearly seems to me that he represents,  
15 and likely will continue to represent, certainly to  
16 the extent where society ought not run the risk of  
17 being the kind of person who ought never be allowed  
18 outside of the institution.

19                   The defendant, in addition to being  
20 eligible for capital punishment by virtue of having  
21 committed an offense, or committed the offense of  
22 murder while committing the felony offense of aggravated  
23 kidnapping, also is eligible by virtue of the fact  
24 that his crime is one which meets the definition of

1 being exceptionally heinous and brutal, indicative  
2 of wanton cruelty, which qualifies him for a  
3 natural life sentence and/or imposition of the  
4 death penalty.

5                   The definition of brutal, as used  
6 in the context that I just used it, according to  
7 People versus Lucas, is defined to mean grossly  
8 ruthless, devoid of mercy or compassion, cruel  
9 and cold blooded. And the term "heinous" is defined  
10 also by People versus Lucas, means shockingly evil,  
11 grossly bad, enormously and flagrantly criminal.  
12

13                   And it seems to me that this defendant's  
14 crime meets the definitions. And so it is the  
15 Court's intention not to mitigate the punishment  
16 of this defendant, but to take the opportunity, as  
17 I view it, to extract from him the retribution that  
18 I think society is entitled to. And in doing that  
19 it strikes me that that is inconsistent with taking  
20 his life and short circuiting the retribution  
21 that I think we are entitled to.

22                   Were it within my personal provence  
23 to do, I would try as nearly as is humanly possible  
24 to make certain that the defendant enjoyed a long  
life, and as he goes through the aging process that is

1 associated with a long life, and begins to find  
2 the deterioration of body that is accompanied with  
3 aging.

4 I would provide him with the very  
5 best medical care available so that I could extend  
6 his life for as long as possible. During all that  
7 period of time he would know that he is an  
8 unacceptable member of our society, that he's  
9 never going to reenter society, that all of the  
10 things which go to make up life as we understand  
11 it in view of--and given the differences in how we  
12 individually approach life, nonetheless there are  
13 some things which are consistent with it, and one  
14 of them, or several of them, are the right to enjoy  
15 the companionship of friend and family, to have love  
16 and nurturing and caring, to be able to make decisions  
17 about one's life on a minimal basis at least, that  
18 are unaffected by the will of others.

19 Be able to come and go limitedly as one  
20 pleases. To make those kinds of fundamental decisions  
21 on a day to day basis. All of that he will not be  
22 permitted to do. And to know that no matter what  
23 else happens the certainty of his life is that day  
24 after day, week after week, month after month, year

1 after year, decade after decade, he will be in the  
2 Illinois State Penitentiary until he dies. Hopefully,  
3 of old age.

4 And so it is the judgment and sentence  
5 of the court that on Count One of the indictment  
6 charging the defendant with the offense of first  
7 degree murder, that the defendant be sentenced to a  
8 term of natural life in the Illinois Department of  
9 Corrections. The provisions of Section 1005-8-4(b)  
10 require the Court to impose consecutive-- To impose  
11 concurrent sentences on a defendant who is found  
12 guilty of multiple offenses; to impose concurrent  
13 sentences unless one of the offenses for which the  
14 defendant was convicted was a Class X or Class One  
15 Felony, and the defendant inflicted severe bodily  
16 injury or where the defendant was convicted of a  
17 violation of Section 12.13 or 12-14 of the code.

18 On Count 10 of the indictment charging  
19 the defendant with the offense of aggravated criminal  
20 sexual assault, the defendant is sentenced to a term  
21 of thirty years in the Illinois Department of Corrections,  
22 said sentence to run consecutive with the natural  
23 life sentence imposed in Count One.

24 On Count 12 of the indictment charging

1 the defendant with the offense of concealment of  
2 a homicidal death, the defendant is sentenced to a  
3 term of five years in the Illinois Department of  
4 Corrections, said sentence to run concurrent with  
5 the sentence imposed on Count 10, the aggravated  
6 criminal sexual assault count, and consecutive with  
7 the sentence imposed on Count One.

8 On Count 14, the aggravated kidnapping  
9 offense, the defendant is sentenced to a term of  
10 fifteen years in the Illinois Department of Corrections,  
11 said sentence to run concurrent with the sentence  
12 imposed on Counts 12 and 12, the aggravated sexual  
13 assault count, and the concealment of a homicidal  
14 death count, and consecutive with the sentence imposed  
15 on Count One, the first degree murder count.

16 The mittimus is to issue. Mr. Hendricks,  
17 you have a right to appeal from the judgment and  
18 sentence of the Court. In order to do that you  
19 must, within thirty days from today's date, file  
20 with the clerk of the court a written notice of  
21 appeal.

22 If you are indigent and cannot afford  
23 counsel, I will appoint an attorney to represent you  
24 without any cost to you whatsoever to assist you in

1 preparing your notice of appeal, to docket your  
2 appeal, and to represent you in the prosecution  
3 of your appeal.

4 I will also grant you a free transcript  
5 of all of the proceedings in this case to further  
6 assist you in prosecuting your appeal. The most  
7 important thing for you to remember if you intend  
8 to appeal from the judgment and sentence of the  
9 Court, you must, within thirty days from today's  
10 date, file with the clerk of the court a written  
11 notice of appeal. If you fail to file such a notice  
12 within thirty days from today's date, you will  
13 probably lose your right to appeal.

14 Upon your request I will order the  
15 clerk of the court to prepare for you and file a  
16 written notice of appeal. Do you understand your  
17 right to appeal?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Is there anything about your  
20 right to appeal that you do not understand?

21 THE DEFENDANT: No, there is not.

22 THE COURT: Is there anything about the  
23 proceedings this morning that you did not understand?

24 THE DEFENDANT: No, sir.

1 MS. PLACEK: Your Honor, in that regard  
2 we've discussed the matter of appeal with Mr. Hendricks  
3 because the Court has, in fact-- Or more or less we  
4 weren't sure which avenue this was to be appealed  
5 to because of the implication of sentencing, and  
6 we would ask the Court, at this particular time,  
7 in speaking on behalf of Mr. Hendricks, to, in fact,  
8 appoint the Office of the Public Defender.

9 Mr. Hendricks, in fact, remains  
10 indigent and the papers, in fact, are being presented  
11 to the Court in this regard.

12 THE COURT: All right. When you draft your  
13 notice of appeal and an order appointing the Public  
14 Defender, and also an order for a transcript, I will  
15 sign such an order when you present it to me.

16 MS. PLACEK: Thank you, Your Honor. May  
17 Mr. Hendricks be allowed to leave the room?

18 THE COURT: He may.

19 MS. PLACEK: Thank you, Your Honor.

20 THE COURT: Ladies and gentlemen, there's going  
21 to be a short recess. We will reconvene in about five  
22 or ten minutes and we will complete the call and hear  
23 those matters that are ready for hearing. Court's  
24 in recess.

2 STATE OF ILLINOIS }  
3 COUNTY OF COOK }  
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SS:

We, the undersigned, Official Court Reporters of the Circuit Court of Cook County, County Department-Criminal Division, do hereby certify that we reported in shorthand the proceedings had in the above-entitled cause; that we thereafter caused to be transcribed into typewriting the foregoing transcript, which we hereby certify is a true and correct Report of Proceedings had in the above-entitled cause.

Shelly M. Hiltner Rella Jordan  
Mary Beck Grupp Carol Kuhn  
Beverly North Paul E. Brader  
Robert J. Lutz Mary A. Gleens  
Nicola Voglsang Dolores R. B. B. J.  
James M. O'Brien Danya Booth  
2721 Linke B. Stone